

# Exhibit 1



**Hot  
Desk**

Logged in as pc01826

## Criminal Warrant

Cancel

### Record Details

ID	348356	LEADS No	W19L7484	Modified By	PC0AN99
Warrant Number	CW0064675	Send To LEADS	YES	Modified Date	25-Oct-2019 10:36
IR	943741	Send To NCIC	YES	Validated By	PC0AN99
RD	JC376764	Category/Caution	A - ARMED AND DANGEROUS	Validated Date	25-Oct-2019 10:36
* Docket	19111696501	FBI	285938MA8	LEADS Status	ACCEPT
CB		SID	IL28987780	<a href="#">LEADS Response</a>	
Recall		e.g. IL12345678			
Status	ACTIVE	Created By	PC0X422		
		Created Date	27-Aug-2019 23:35		

### Warrant Details

Val/Unit	CWU - CENTRAL WARRANT UNIT	720	
Issued	27-Aug-2019	Charges	ILCS 5.0/10-1-A-2
Judge	KUZAS	Charge Descr	KIDNAPPING - FORCE OR THREAT OF FORCE
Court	98	OOC	-
Key	K	* Offense	1002-KIDNAPPING-ADULT FOR RANSOM
Bond	0.0	CIL?	NO
Cash	NO	GEO	
District	166 - FIELD SERVICES SECTION (FSS)	EXL Help	
BF?	NO	EXL	1
		Tmp Brd	

### Subject Details

Last Name RODRIGUEZ  
 First Name RICARDO  
 Middle Initial  
 Suffix  
 Sex MALE  
 Race UNKNOWN  
 DoB 14 Feb 1973  
 DD-MON-YYYY  
 Age 46  
 Weight 150  
 Height 511  
 Hair BLACK  
 Eye BROWN

Street No 1445 Street Dir  
 Street Name WALNUT CREEK DR  
 Apt/Unit  
 City ELGIN  
 State ILLINOIS  
 Zip 60123  
 Beat  
 SOC  
 FPC  
 DLN  
 DLY  
 DLS

**JGS\_RODRIGUEZ 07**

Skin MEDIUM  
Smt1 ARM TATTOO, LEFT  
Smt2 TATTOOS, NECK

POB

### Complainant Details

Name CARMEN SANCHEZ/ STAUNTON 21111 Street No   
Phone   
Phone Ext   
Unit 630 - DETECTIVES - AREA 3 Apt/Unit   
Pax   
City CHICAGO  
State ILLINOIS  
Zip

### Aliases

ID	Last Name	First Name	MI	Suffix	DOB
1 264611	LOPEZ	RICARDO	R		
2 264610	RODRIGUEZ	RICHARD	R		
3 264608	RODRIGUEZ	RICARDO RAMON			
4 264609	RODRIGUEZ	RICHARDO	R		

### Miscellaneous

Misc   
KIDNAPPING RANSOM HOME INVASION  
FIREARM 720 ILCS 5 19 6A3 AGG UNLAW  
FELONY RESTRAINT 720 ILCS 5 10 3 1A DOC 19  
111696501 OTX 312 745 5221

Cancel

© Chicago Police Department 2012

**JGS\_RODRIGUEZ 08**

M/M5MDB2YW  
1001 NCIC RESPONSE  
ILCPD00N9  
  
\*\*\*MESSAGE KEY QW SEARCHES WANTED PERSON FILE FELONY RECORDS REGARDLESS OF  
EXTRADITION AND MISDEMEANOR RECORDS INDICATING POSSIBLE INTERSTATE  
EXTRADITION FROM THE INQUIRING AGENCY'S LOCATION. ALL OTHER NCIC PERSONS  
FILES ARE SEARCHED WITHOUT LIMITATIONS.  
MKE/WANTED PERSON - CAUTION  
CMC/00 - ARMED AND DANGEROUS  
EXL/1 - FULL EXTRADITION  
ORI/ILCPD00N9 NAM/RODRIGUEZ,RICARDO SEX/M RAC/U  
DOB/19730214 HGT/511 WGT/150 EYE/BRO HAI/BLK FBI/285938MA8  
SKN/MED SMT/TAT L ARM  
MNU/OA-943741  
OFF/KIDNAP ADULT FOR RANSOM  
DOW/20190827 OCA/W19L7484  
NOA/N  
MIS/KIDNAPPING RANSOM HOME INVASION FIREARM 720 ILCS 5 19 6A3 AGG UNLAW FELONY  
MIS/RESTRAINT 720 ILCS 5 10 3 1A D0C 19 111696501  
DNA/N  
ORI IS CHICAGO PD 312 745-5206  
AKA/LOPEZ,RICARDO R  
AKA/RODRIGUEZ,RICARDO RAMON  
AKA/RODRIGUEZ,RICHARD R  
AKA/RODRIGUEZ,RICHARDO R

**JGS RODRIGUEZ 09**

M/M5MDB2YW

1L02 NCIC RESPONSE

NIC/W767661004 DTE/20190828 0035 EDT DLU/20190828 0038 EDT

# Exhibit 2

## Austin Rahe

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**From:** David A. Brueggen <DBueggen@jsotoslaw.com>  
**Sent:** Friday, December 27, 2019 12:43 PM  
**To:** Tara Thompson  
**Cc:** Josh M. Engquist; Eileen E. Rosen; Austin Rahe; Theresa B. Carney; Catherine M. Barber; Caroline P. Golden; Jim Daffada; Jeffrey R. Kivet; Russell Ainsworth; Monica Fuentes; Diamond M. Dixon; thomas@ilesq.com  
**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Tara - We still have not received Plaintiff's answers to outstanding written discovery. Plaintiff's answers were due on or about November 14, 2019 as the parties agreed. We then received no responses to our multiple communication attempts until just last week when you said you would get us the answers on December 23, 2019. We would prefer not to delay things further because your continued delay will force us to file a motion, but we need Plaintiff's answers to written discovery to move forward with discovery and issue additional record subpoenas. We are willing to work with you on this, but need you to provide us more information about the reason(s) for the ongoing delay and when you expect that to be rectified so that we can plan accordingly.

Additionally, you never substantively responded to my emails about the proposed HIPAA/Mental Health Protective Order and FERPA release. Accordingly, to avoid further delay in obtaining records and moving forward with discovery, we will file a motion to have our proposed HIPAA/Mental Health Protective Order entered. As a reminder, our proposed order is the same one that was entered in the Sierra case and it was also recently entered in the Fulton/Coleman cases. With regard to the FERPA release, please have your client execute it and return it to our attention. We would prefer not to have to involve the Court on the FERPA release issue, but if you do not respond, you will leave us no choice but to ask the Court for its assistance.

Finally regarding your request to discuss discovery scheduling, we agree that this would be a good idea. However, any such discussion will not be efficient until after we have had an opportunity to review Plaintiff's answers to written discovery so we are fully informed and able to discuss discovery scheduling in total.

If we do not receive additional information and clarification for Plaintiff's continued delay and a reasonable date by which Plaintiff will answer written, or do not receive Plaintiff's answers to written before Monday (12/30/19) morning, we will be forced to ask the Court for assistance.

Thanks,

David A. Brueggen  
(630)735-3317

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**From:** Tara Thompson <tara@loevy.com>  
**Sent:** Monday, December 23, 2019 3:33 PM  
**To:** David A. Brueggen <DBueggen@jsotoslaw.com>  
**Cc:** Josh M. Engquist <JEngquist@jsotoslaw.com>; Eileen E. Rosen <ERosen@rfclaw.com>; Austin Rahe <arahe@rfclaw.com>; Theresa B. Carney <tcarney@rfclaw.com>; Catherine M. Barber <cbarber@rfclaw.com>; Caroline P. Golden <CGolden@jsotoslaw.com>; Jim Daffada <jim@ilesq.com>; Jeffrey R. Kivet <JKivet@jsotoslaw.com>; Russell Ainsworth <russell@loevy.com>; Monica Fuentes <monica@loevy.com>; Diamond M. Dixon <DDixon@jsotoslaw.com>;

thomas@ilesq.com

**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Hi everyone:

I'm just following up. I apologize for the delay in finishing - I had a 7th Circuit reply due today we were finishing up and am still conferring with our client to finish. I should be talking to him tonight and hopefully we can get everything circulated to you then.

Do you want to set up a time next week or after January 2 to confer about depositions?

Thanks,

Tara

On Wed, Dec 18, 2019 at 10:02 PM Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)> wrote:

David:

Thanks for checking in, and I apologize for the delay in responding. I should be able to get you both by the 23rd.

Do we want to set up a time right after the holidays to confer about depositions going forward?

Thanks,

Tara

On Tue, Dec 17, 2019 at 3:36 PM David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)> wrote:

Tara – we have received no response to our emails below and December 16 voice message in an effort to discuss our proposed HIPAA/Mental Health order and when Plaintiff will respond to outstanding written discovery.

We ask that you please provide us Plaintiff's answer to written discovery by December 23, 2019 to avoid the continued delay in discovery. If you are unable or unwilling to provide Plaintiff's answer to written discovery by December 23, 2019 please contact Josh Engquist or me immediately to discuss. Should we not hear from you or receive Plaintiff's responses to written discovery by December 23, 2019 we will forced to ask the Court for its assistance.

Additionally, please contact us about the proposed HIPAA/Mental Health order. If we do not hear from you by December 23, 2019, we will file a motion for entry of our proposed HIPAA/Mental Health order to avoid further delay in obtaining records.

Thank you,



David A. Brueggen

(630)735-3317

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**From:** David A. Brueggen

**Sent:** Thursday, December 12, 2019 10:07 AM

**To:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>; Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>

**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; [thomas@ilesq.com](mailto:thomas@ilesq.com)

**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Tara – we have not received any response to the below emails regarding several discovery matters. To avoid unnecessary delays in discovery can you please advise me of your availability to discuss the following discovery issues:

- We have not received Plaintiff's answers to written discovery and need to know when you anticipate being able to provide us Plaintiff's answers to written discovery;
- Subpoenaed entities will not produce Plaintiff's medical and mental health records until we have a HIPAA/Mental Health Protective order from the Court so can you please review the previously forwarded proposed HIPAA/Mental Health Protective order and advise if you have any objection to its entry; and
- We have not received an executed copy of the FERPA release that we need to obtain Plaintiff's relevant educational records.

I look forward to discussing the above discovery issues so that we can keep discovery moving.

Thanks,

David A. Brueggen

(630)735-3317

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**From:** David A. Brueggen

**Sent:** Thursday, December 05, 2019 9:45 AM

**To:** 'Tara Thompson' <[tara@loevy.com](mailto:tara@loevy.com)>; Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>

**Cc:** 'Eileen E. Rosen' <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; 'Austin Rahe' <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; 'Theresa B. Carney' <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; 'Catherine M. Barber' <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; 'Jim Daffada' <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; 'Russell Ainsworth' <[russell@loevy.com](mailto:russell@loevy.com)>; 'Monica Fuentes' <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; 'thomas@ilesq.com' <[thomas@ilesq.com](mailto:thomas@ilesq.com)>

**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Tara – I wanted to follow up on the below email regarding the proposed HIPAA/MH Protective Order and FERPA release. Can you please let me know your position on those by Monday December 9 to avoid any delay in obtaining records. Several of the entities we subpoenaed for records have advised that they are unable to comply with the subpoena until they receive a HIPAA order.

Additionally, we wanted to update you on Mr. Halvorsen's medical condition that lead to his hospitalization in the beginning of November. We recently learned that Mr. Halvorsen will be undergoing surgery for his medical condition and will be under the care of a physician for some time after that. After Mr. Halvorsen is cleared by his surgeon and doctors we will provide you his answers to interrogatories. We will keep you apprised of his recovery.

Lastly, we still have not received Plaintiff's responses to our written discovery. Can you please let us know when you anticipate providing us Plaintiff's answers.

Thanks,

David A. Brueggen

(630)735-3317

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---

**From:** David A. Brueggen  
**Sent:** Monday, November 25, 2019 2:12 PM  
**To:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>; Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>  
**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; [thomas@ilesq.com](mailto:thomas@ilesq.com)  
**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Counsel - attached please find a FERPA release for Mr. Rodriguez to sign and have notarized so that we can subpoena his educational records. Please have Mr. Rodriguez execute the FERPA release, have it notarized and return it to my attention.

In addition, please find a proposed HIPAA and Mental Health protective order that is consistent with the agreed HIPAA and Mental Health Protective order that was entered in the Montanez case. Kindly advise if you have any objection to the entry of this protective order.

Thank you for your anticipated cooperation,

David A. Brueggen

The Sotos Law Firm, P.C.

141 W. Jackson Blvd. #1240A

Chicago, IL 60604

(630)735-3317 (Direct)

(630) 773-0980 (Fax)

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**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Sent:** Wednesday, November 13, 2019 4:55 PM  
**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>  
**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; [thomas@ilesq.com](mailto:thomas@ilesq.com)  
**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Everyone:

I am truly sorry for the delay, but I've had a little trouble conferring with our client to get these done, but we're close. I think one more day will do it, so we'll plan to respond tomorrow. Again, my apologies to everyone for taking some time to get this done.

Thanks,

Tara

On Tue, Nov 12, 2019 at 10:57 AM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Of course ... no objection from us.

Sincerely,

Josh Engquist

(630) 735-3303

---

**From:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>  
**Sent:** Tuesday, November 12, 2019 10:21 AM  
**To:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>; Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>  
**Cc:** Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen

<[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; [thomas@ilesq.com](mailto:thomas@ilesq.com)  
**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

If you need until tomorrow, the City has no objection.

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Sent:** Tuesday, November 12, 2019 10:18 AM  
**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>  
**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; [thomas@ilesq.com](mailto:thomas@ilesq.com)  
**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Josh:

Thanks for the update - I appreciate it.

We are not going to be able to confer with our client to finalize our discovery responses until tonight, so it is possible we may not be able to make our submissions until tomorrow morning. I apologize for that, but hope everyone is amenable to potentially getting ours sometime tomorrow.

Thanks,

Tara

On Mon, Nov 11, 2019 at 4:39 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Tara:

I wanted to give you a heads up.

Mr. Halvorsen was released at the end of last week from the hospital after a lengthy stay.

He is still dealing with medical issues, so we have not been able to work with him on his discovery responses.

As I am sure you would agree, his health comes first.

By early next week, I hope to have a better idea of when he will be able to work with us in completing his responses.

Sincerely,

Josh Engquist

(630) 735-3303

---

**From:** Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>

**Sent:** Thursday, November 7, 2019 4:14 PM

**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>; Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>

**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>

**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Tara – no problem Thanks, Tom

Thomas More Leinenweber

Leinenweber Baroni & Daffada, LLC

120 North LaSalle Street, Suite 2000

Chicago, Illinois 60602

(312) 606-8705

[www.ilesq.com](http://www.ilesq.com)

---

**From:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>  
**Sent:** Thursday, November 7, 2019 4:05 PM  
**To:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>  
**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Of course ... I have no objection.

Sincerely,

Josh Engquist

(630) 735-3303

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Sent:** Thursday, November 7, 2019 3:56 PM  
**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>  
**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>  
**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Counsel:

My paralegal has been on trial in another matter and I am still finishing up our responses to everyone's interrogatories. I know we need to get these done and moved forward, but I would appreciate a couple of additional days. Given Veterans Day is Monday, would folks object if we provided our answers by the close of business on Tuesday? We, of course, are happy to accommodate others in the same fashion.

Thanks,

Tara

On Wed, Oct 30, 2019 at 2:10 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Sounds good ...

Sincerely,

Josh Engquist

(630) 735-3303

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>

**Sent:** Wednesday, October 30, 2019 12:38 PM

**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>

**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>

**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

I agree - Nov. 8 for everyone makes sense, and if we can get ours done before that we'll produce them earlier.

What about having a call the week after to talk about depositions?

On Wed, Oct 30, 2019 at 12:29 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Tara-



It makes sense that everyone is on the same schedule. We are going to need the additional time to get all our discovery responses in. I hope that is agreeable.

We will be sending out the individual interrog responses as we get the attestations in and not holding them until the end.

Sincerely,

Josh Engquist

(630) 735-3303

---

**From:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>  
**Sent:** Wednesday, October 30, 2019 9:51 AM  
**To:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Cc:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>  
**Subject:** RE: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Thanks.

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Sent:** Wednesday, October 30, 2019 9:43 AM  
**To:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>  
**Cc:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>  
**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Eileen:

No problem. Thanks for checking in. (And congrats to Austin and his wife!)

Tara

On Wed, Oct 30, 2019, 9:37 AM Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)> wrote:

Tara –

We also need a little more time to respond to Plaintiff's discovery requests. Austin has been working on them but his wife had the baby last night so we are a little behind. 😊 Can we also get until 11/8?

Eileen

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>

**Sent:** Wednesday, October 30, 2019 9:20 AM

**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>

**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>

**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Josh:

I will check back with our team about who we have been in touch with, but I don't think we have any dates in mind for these - do you want to set up a time to confer about this?

Also, and I'll confess I don't recall the exact due date right now for Mr. Rodriguez's discovery responses, but we need a little additional time - would the parties object to Mr. Rodriguez providing those by November 8?

Thanks,

Tara

On Mon, Oct 28, 2019 at 12:21 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Tara-

Have you been in contact with any of the 3<sup>rd</sup> party witnesses you noticed earlier?

If so, have they indicated any potential dates for their depositions?

That way we can start working on getting them set.

Sincerely,

Josh Engquist

(630) 735-3303

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>

**Sent:** Thursday, October 10, 2019 12:41 PM

**To:** Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>

**Cc:** Eileen E. Rosen <[ERosen@rfclaw.com](mailto:ERosen@rfclaw.com)>; Austin Rahe <[arahe@rfclaw.com](mailto:arahe@rfclaw.com)>; Theresa B. Carney <[tcarney@rfclaw.com](mailto:tcarney@rfclaw.com)>; Catherine M. Barber <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>; Thomas Leinenweber <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; Jim Daffada <[jim@ilesq.com](mailto:jim@ilesq.com)>; Jeffrey R. Kivetz <[JKivetz@jsotoslaw.com](mailto:JKivetz@jsotoslaw.com)>; Russell Ainsworth <[russell@loevy.com](mailto:russell@loevy.com)>; Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>

**Subject:** Re: Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Josh:

Thanks. Please provide us dates when you can and we will work on scheduling those depositions. We can also talk about dates for the third parties so we can get subpoenas out.

Best,

Tara

On Thu, Oct 10, 2019 at 1:13 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Counsel –

We have received your notices for the depositions of the Defendant Officers that we represent. The Defendant Officers and/or we are not available on the dates noticed.

Also, as you are aware, Mr. Curley resides in Arizona, so the scheduling of his deposition must take into consideration the necessary travel.

We will consult with our clients and provide you several dates when we are available for the depositions.

Thank you,

**Josh M. Engquist**

**The Sotos Law Firm, P.C.**

141 W. Jackson Blvd., Ste. 1240A

Chicago, IL 60604

(630) 735-3303

This email, including attachments, is covered by the *Electronic Communications Privacy Act*, 18 U.S.C. 2510-2521. It contains information that is confidential and it may be protected by the attorney/client or other privileges. This e-mail, including attachments, constitutes non-public information intended to be conveyed only to the designated recipients. If you are not an intended recipient,

please delete the e-mail, including attachments, and notify sender by mail, e-mail, or at 630-735-3300. The unauthorized use, dissemination, distribution or reproduction of this e-mail, including attachments, is prohibited and may be unlawful.

**From:** Tara Thompson [mailto:[tara@loevy.com](mailto:tara@loevy.com)]

**Sent:** Friday, September 20, 2019 7:05 AM

**To:** Eileen E. Rosen; Austin Rahe; Theresa B. Carney; Catherine M. Barber; Jim Sotos; Josh M. Engquist; Caroline P. Golden; David A. Brueggen; Thomas Leinenweber; Jim Daffada

**Cc:** Russell Ainsworth; Monica Fuentes

**Subject:** Rodriguez v. Guevara, et al., Case No. 18 CV 7951

Counsel:

Attached please find Plaintiff's First Notice of Depositions.

Best,

Tara Thompson

---

Tara Thompson  
Loevy & Loevy  
311 North Aberdeen, 3rd Floor

Chicago, Illinois 60607  
(312) 243-5900 (tel)  
(312) 243-5902 (fax)  
[tara@loevy.com](mailto:tara@loevy.com)

pronouns: she, her, hers

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pronouns: she, her, hers

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Tara Thompson

Loevy & Loevy

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Chicago, Illinois 60607

(312) 243-5900 (tel)

(312) 243-5902 (fax)

[tara@loevy.com](mailto:tara@loevy.com)

pronouns: she, her, hers



# Exhibit 3



1 MR. HORVATH: Andrew Horvath for the People.

2 MS. THOMPSON: Tara Thompson from the Exoneration  
3 Project on behalf of Ricardo Rodriguez, your Honor.

4 MS. MYERSCOUGH-MUELLER: Lauren Myerscough-Mueller,  
5 M-Y-E-R-S-C-O-U-G-H-M-U-E-L-L-E-R, also from the  
6 Exoneration Project on behalf of Mr. Rodriguez.

7 THE COURT: All right. What's our status?

8 MS. THOMPSON: I think we were here today to have  
9 the hearing on Mr. Rodriguez's certificate of innocence  
10 petition. My understanding is that both sides intend to  
11 proceed merely with evidence that's already in the record  
12 and to make this primarily an argument before the court.

13 THE COURT: All right.

14 MS. THOMPSON: And the parties are prepared to do  
15 that today, your Honor.

16 MR. HORVATH: Same with the State.

17 THE COURT: Okay, all right. Then if you will  
18 indulge me, let me pass the matter, address some other  
19 matters, and I'll bring you back a little later this  
20 morning.

21 (WHEREUPON the case was passed.)

22 \* \* \* \*

23 THE COURT: All right. Ladies and gentleman, again  
24 for the record.

1 MS. THOMPSON: Tara Thompson on behalf of Ricardo  
2 Rodriguez from the Exoneration Project, your Honor.

3 MS. MYERSCOUGH-MUELLER: Also, your Honor, Lauren  
4 Myerscough-Mueller from the Exoneration Project on behalf  
5 of Mr. Rodriguez.

6 MR. HORVATH: Andrew Horvath for the People.

7 THE COURT: All right. Counsel, I want to hear from  
8 you.

9 MS. THOMPSON: Thank you, your Honor.

10 Let me just briefly explain for the court  
11 how the petitioner intends to proceed today. I want to  
12 first note for the record that Mr. Rodriguez is not  
13 present. He has grandparents in California who are  
14 elderly and not doing well, and so he is with his  
15 grandparents in California today and could not be here.

16 He does have family members that are here  
17 to hear this argument and in support of him, and he  
18 understands what's occurring today and wanted it to be  
19 able to proceed and can't be present. So that is why he  
20 is not here, your Honor.

21 THE COURT: All right.

22 MS. THOMPSON: It is the petitioner's intention for  
23 Ms. Myerscough-Mueller to talk briefly about the legal  
24 standard and of the issues related to Detectives Guevara

1           and Halvorsen that are relevant to this petition as well  
2           as to give a brief overview from the facts that are  
3           relevant to this case and relevant to the certificate,  
4           and then I will talk about the remainder of the standards  
5           that applies. So we'd like to split our argument time.

6           MR. HORVATH: Just so I don't interrupt. I would  
7           lodge an objection as to what's going to be proffered  
8           regarding former Detective Reynaldo Guevara in other  
9           cases because that is not testimony in this case that I  
10          don't believe is supported by the statute allowing that  
11          type of evidence.

12                       With that said, I defer.

13          THE COURT: All right. I would normally tell you to  
14          object at the time that that argument is mentioned so I  
15          know specifically what it is that you're referencing. I  
16          think I do know what you're referencing, and I know that  
17          you didn't wish to be rude and interrupt counsel, but  
18          perhaps it would offer some clarity.

19          MR. HORVATH: Certainly, Judge.

20          MS. MYERS-COUGH MULLER: Thank you, Judge.

21                       As you know, we're here on Ricardo  
22          Rodriguez's certificate of petition. Ricardo served over  
23          22 years for a crime he didn't commit and he was a victim  
24          of the well known pattern and practice abuse by Detective

1 Guevara and Detective Halvorsen.

2 But your Honor, this case is not just  
3 about Guevara and his wrongdoing. It's also about, and  
4 it's the main focus of it is Ricardo's innocence. There  
5 are eyewitnesses who swear that Ricardo was not at all  
6 involved. He has an alibi, and absolutely no physical  
7 evidence ever linked him to this crime in any way.

8 He is now seeking the certificate of  
9 innocence from this court to begin to recover from the  
10 devastating impact that this wrongful conviction had on  
11 his life. To obtain this certificate of innocence, there  
12 are four things that we need to establish by a  
13 preponderance of the evidence, and that's our burden.

14 First we need to establish that Ricardo  
15 was convicted of a felony, he was sentenced to a term of  
16 imprisonment and that he served all or part of that  
17 sentence.

18 Second, we need to show that his  
19 conviction was vacated or reversed and that the  
20 indictment was dismissed.

21 Third, we need to show that Ricardo did  
22 not voluntarily cause or bring about his conviction.

23 And fourth, that he is innocent of the  
24 offenses charged in the indictment.

1                   Now, the State does not contest three  
2                   prongs of this, the statute. The State does not contest  
3                   that Ricardo was convicted of first degree murder and  
4                   attempted first degree murder, both felonies, on  
5                   March 19, 1997. And he was sentenced to 90 years. He  
6                   served 22 years, two months and 22 days in prison on  
7                   those charges.

8                   The State does not contest that Ricardo's  
9                   conviction was vacated by Judge Obbish on March 7, 2018,  
10                  and that the State then nolledd the counts remaining on  
11                  the indictment.

12                  And the State does not contest that  
13                  Ricardo did not contribute in any way to his conviction  
14                  as he never misled authorities in any way to think that  
15                  he committed this offense. He has always maintained his  
16                  innocence. He never issued any sort of statement of  
17                  guilt or connection to the crime at all, and he, in fact,  
18                  was not even there.

19                  So the only argument remaining, Judge, is  
20                  on the innocence of Mr. Rodriguez. The State's only  
21                  argument is that Ricardo is not innocent based on the  
22                  identification of a single eyewitness who was the product  
23                  of Guevara and Halvorsens corrupt investigation in this  
24                  case.

1                   Detective Guevara was actually given the  
2                   opportunity to explain his investigation and explain this  
3                   identification, but instead he took the 5th amendment,  
4                   and I'll get into that.

5                   MR. HORVATH: Judge, at this time that's where I  
6                   would lodge my objection to. I believe the argument is  
7                   going to be that you can take a negative influence  
8                   against Guevara in this case based upon his invocation of  
9                   his 5th amendment rights in the ancillary matter. I  
10                  don't believe the law supports that.

11                  Everybody knows what Guevara is going to  
12                  do if called before this court. I'm not being  
13                  duplicitous, but there is that issue.

14                  THE COURT: Well, let me ask you this question. You  
15                  referenced this testimony being given at a deposition in  
16                  an ancillary matter?

17                  MR. HORVATH: Yes, sir.

18                  THE COURT: Were the questions to which, the  
19                  questions that were posed to Mr. Guevara that we're  
20                  talking about now, were those questions related to this  
21                  matter?

22                  MR. HORVATH: They were, Judge.

23                  THE COURT: All right. So then that does not change  
24                  your opinion, you believe, because the proceedings were



1        ancillary, but questions regarding this specific matter,  
2        that that makes them irrelevant or not appropriate?

3            MR. HORVATH: I do, Judge. And again, I'm not being  
4        duplicitous. I understand that if they were to subpoena  
5        Mr. Guevara, I fully anticipate that he would have  
6        invoked his 5th amendment right in this proceeding.

7            And I'm not trying to play games here. My  
8        objection is that a lot of what Guevara had to say in  
9        other cases, even about other cases not detailing the  
10       allegations of Ricardo Rodriguez, just for instance,  
11       Judge, just two weeks ago in a case -- and you can take  
12       judicial notice of this if you wish -- a case called Jose  
13       Maisonette, in fact the petitioner was just served before  
14       this court. Mr. Greenberg came in last week on a  
15       petition.

16            Now, Mr. Guevara was asked questions about  
17       whether he provided underaged girls to the petitioner,  
18       Mr. Maisonette, for some kind of child sex ring for which  
19       he took the 5th amendment to virtually everything. So I  
20       don't think that these type of ancillary proceedings,  
21       that that should be used as a negative inference against  
22       the State. He is not the State, he is a witness.

23            THE COURT: All right. Thank you.

24            MS. THOMPSON: I want to be clear about one

1       procedural issue, and I interject because I think I have  
2       some knowledge about the history of the case that frankly  
3       Mr. Myerscough-Mueller or Mr. Horvath doesn't have, which  
4       is that we did subpoena Mr. Guevara in this case. And if  
5       the court recalls, there was an agreement, and this did  
6       predate Mr. Horvath with the State, that in lieu of  
7       seeking a separate deposition of Mr. Guevara about Mr.  
8       Rodriguez's case, we would instead ask the questions that  
9       we had of him for these proceedings in a deposition in  
10      another matter that was going to occur in Texas where Mr.  
11      Guevara resides.

12                   And so the taking of the 5th that Ms.  
13      Myerscough-Mueller refers to is for all intents and  
14      purposes a deposition that occurred with the agreement of  
15      the State that would involve Mr. Rodriguez's case.

16                   And I understand the point which the court  
17      is making that that probably doesn't even matter, but it  
18      was the State's understanding that he was going to be  
19      posed questions at that time in lieu of seeking a  
20      separate deposition. That is what Ms. Myerscough-Mueller  
21      is referring to.

22                   Thank you, Judge.

23                   MS. MYERSCOUGH-MUELLER: So there is the single  
24      eyewitness, like I said, that was the product of

1 Guevara's corrupt investigation. The single eyewitness  
2 does not outweigh the two eyewitnesss that I'm going to  
3 talk about who swear that Ricardo was not involved, does  
4 not outweigh any absence, the absence of any physical  
5 evidence, and the pattern and practice of misconduct that  
6 has been proven that Halvorsen and Guevara undertook in a  
7 number of cases including in this case.

8 So your Honor, I want to give a brief  
9 background of the facts in this case to kind of put  
10 everything in context. So this case involved a shooting,  
11 and Rodney Kemppainen, and that's K-E-M-P-P-A-I-N-E-N, he  
12 was shot and killed in an apparent drive-by on  
13 December 16, 1995. That was in the early morning hours,  
14 it was dark outside, and while he was standing on a  
15 corner with Kenneth Rudy and Aurelio Martinez. There was  
16 drinking involved by many at the scene that night, and  
17 we'll explain why that matters in a little bit.

18 So then as the car sped away, it slowed to  
19 supposedly shoot at Rudolfo Zaragoza who survived and was  
20 another eyewitness in this matter.

21 Detectives Guevara and Halvorsen then  
22 picked up the case. There was a statement at the scene  
23 by Kenneth Rudy who was one of the men who was there that  
24 day who said that he was not going to be able to identify

1           anyone, that the muzzle flashes from the car obscured his  
2           view to be able to see the person's face.

3                       So Detective Guevara and Halvorsen had  
4           both Zaragoza and Martinez view gang books. Neither of  
5           them made any identification from those gang books, but  
6           we have every reason to believe that Ricardo's photo was  
7           in those gang books because the police believed him to be  
8           a gang member.

9                       With no leads at that point, the  
10          detectives claim that they got an anonymous tip that  
11          Ricardo was responsible; however, the account of those  
12          tips are inconsistent. One time they said it came from a  
13          gang informant who claimed he was present when Ricardo  
14          was bragging about the crime, and in another report they  
15          said that that anonymous tip was actually a phone call  
16          where someone asked whether Casper, which was a nickname  
17          of Ricardo, was under arrest for this murder.

18                      So the detectives based on this alleged  
19          anonymous tip had Zaragoza and Martinez view photo arrays  
20          and line-ups, and then the two allegedly identified  
21          Ricardo at the line-up.

22                      So based on only these two eyewitnesses  
23          and Detective Guevara, Ricardo was convicted of the first  
24          degree murder and the attempted first degree murder of

1 Zaragoza, and he was sentenced to 90 years.

2 But then as soon as the conviction  
3 happened, the case began to unravel immediately. The  
4 eyewitness, Zaragoza, came forward and swore an affidavit  
5 pretty immediately after the trial in 1997 that he  
6 actually wasn't sure about his identification and that  
7 Detective Guevara pointed Ricardo out to him as the  
8 perpetrator.

9 MR. HORVATH: I'd object to that. That misstates  
10 the evidence.

11 MS. MYERSCOUGH-MUELLER: Your Honor, there is a --  
12 there are two affidavits from Zaragoza in this case that  
13 I'm getting into. The first one is from 1997 where he  
14 said he goes back and forth -- and I have a copy of that.  
15 He had been tossing and turning at night because he --

16 THE COURT: So State, are you -- when you say it  
17 misstates the evidence, are you saying that counsel is  
18 mischaracterizing the affidavit from Zaragoza?

19 MR. HORVATH: Yes, Judge, and I'll get into that.  
20 Again, we have a procedure here and that's fine.

21 THE COURT: All right.

22 MS. THOMPSON: So then in 2002, Zaragoza recanted  
23 his entire testimony in the second affidavit saying he  
24 was 100 percent certain that Ricardo was not the shooter,

1           and he was pressured by Guevara and Halvorsen.

2                       Many years later during the post  
3       conviction investigation, another eyewitness came forward  
4       who there was no record of prior to that, and this was  
5       Ricardo Sierra. There is also an affidavit of that in  
6       the record for your Honor.

7                       Ricardo Sierra provided this affidavit  
8       swearing that he was there when the shooting happened.  
9       He had a good viewpoint across the corner of the shooting  
10      and knew for certain that Ricardo was not the shooter.  
11      He actually tried to tell police what he saw that night,  
12      but they would not listen to him, that they told him to  
13      go away or he would be locked up. So he didn't make a  
14      formal statement to police, but they knew of him.

15                      This is a man, your Honor, who had no  
16      reason to lie. He was friends of the victim, rival gang  
17      from Mr. Rodriguez, and that actually explains why he  
18      hadn't come forward before.

19                      Your Honor, also during this time for the  
20      post conviction investigation, the pattern and practice  
21      of abuse and misconduct by Detective Guevara and  
22      Halvorsen is now well known by this court and the State  
23      as well came to light as more details emerged all the  
24      time as to what these detectives were doing in these

1 cases that they were investigating.

2 That pattern and practice put Ricardo's  
3 case in a new light, in a different light, and finally  
4 explained how his wrongful conviction happened. It lent  
5 credibility to an innocence claim that he had been making  
6 for two decades and to Zaragoza's affidavits that he made  
7 and said that he was pressured by the detectives and felt  
8 intimidated. And it also, and very importantly,  
9 undermined the credibility of the one remaining witness,  
10 Aurelio Martinez.

11 Based on the overwhelming evidence of  
12 Ricardo's innocence, that is when his petition was  
13 vacated and charges were dismissed in 2018. That was on  
14 the State's motion. The State recognized they did not  
15 have enough evidence to keep Ricardo in prison and took  
16 the extraordinary step of asking courts to let Ricardo go  
17 free.

18 And now your Honor should go a step  
19 further. It was ripe for Judge Obbish to vacate that  
20 conviction and it's ripe for this court to grant him a C  
21 of I.

22 Let's look at the case against Ricardo  
23 today, how it stands. He has an alibi, as I mentioned.  
24 He was at home with his mom all night. There is an

1       affidavit from his mom and from his sister. Both are in  
2       the record, and I can provide these to your Honor as  
3       well, but those have been attached to the record.

4               Okay. There is also no physical evidence  
5       that ever tied him to the crime. In fact, the only  
6       physical evidence was this light blue car that they said  
7       the person was in that was never tied to Mr. Rodriguez.  
8       And all the records showed that he drove a black vehicle.

9               We also have one of two star eyewitnesses  
10       against Ricardo Zaragoza who has recanted in full and  
11       explained that he was pressured to falsely identify  
12       Ricardo by the detectives. He has provided those two  
13       affidavits.

14              An additional witness, Ricardo Sierra, has  
15       come forward to tell the truth, that he was there that  
16       day and knows Ricardo didn't commit the crime. And we  
17       also have the now established pattern and practice of  
18       abuse by Guevara and Halvorsen that the court record his  
19       innocence and explained how he was falsely identified and  
20       wrongly committed. And we have attached a number of  
21       affidavits and exhibits to support that.

22              So all that remains is this unreliable  
23       tainted inconsistent testimony of Aurelio Martinez who is  
24       a witness whose identification was the product of Guevara



1           and Halvorsen and their corrupt investigation. And it's  
2           completely undermined by their pattern and practice as  
3           well as the affidavit of Zaragoza and Sierra. All of  
4           this evidence together, your Honor, demonstrates by a  
5           preponderance of the evidence that Ricardo is an innocent  
6           man.

7                       And the preponderance of the evidence  
8           standard, your Honor, is more likely than not. So what's  
9           more likely than not here? That Ricardo, who has an  
10          alibi, no physical connection, two eyewitnesses  
11          exculpating him, and two corrupt detectives on the case  
12          is another innocent victim of Guevara and Halvorsen.

13                      And I know this court is undoubtedly very  
14          well aware of the well established pattern and practice  
15          by Guevara and Halvorsen, but since this misconduct  
16          weighs so heavily on this case and on Ricardo's innocence  
17          as well as the one remaining witness that the State cites  
18          to, it's important, I think, to review that misconduct  
19          briefly because it mirrors exactly what happened in this  
20          case.

21                      MR. HORVATH: Your Honor, at this time if I could  
22          just object and make my argument for the record, and I'll  
23          be brief.

24                      With respect to pattern and practice

1 material outside of the investigation of Ricardo  
2 Rodriguez, I would object because I don't believe it's  
3 impermissible -- I don't think it's permissible. I think  
4 it's impermissible propensity evidence.

5 And the reason I say that, Judge, is  
6 because generally speaking, pattern and practice or modus  
7 operandi evidence is used to identify an individual as  
8 the absconder or the individual who violated in this  
9 cease somebody's civil rights.

10 By way of an example, Judge, if for  
11 instance I was a bank robber and I went into the bank and  
12 I used a specific mask and specific gun and then ten  
13 years later on parole the very next day Chase downtown is  
14 robbed by somebody with the same mask and the same gun,  
15 the prosecution in most jurisdictions would be allowed to  
16 introduce my past gun, mask evidence, to show identity.  
17 They use modus operandi to show identity of the  
18 individual who committed the crime or in this case  
19 committed a constitutional violation as alleged.

20 Here there is no question. Here is no  
21 question according to their own arguments who in fact  
22 violated somebody's civil rights. It was Guevara and  
23 Detective Halvorsen. That's clear as day. So they're  
24 not using modus operandi to say, well, here we go, we can

1 uncover the perpetrator here.

2 What they're saying, Judge, impermissibly,  
3 is they did it once and now they did it again. It's  
4 propensity evidence. It's not allowed under 404. That's  
5 my objection.

6 MS. MYERSCOUGH-MUELLER: Your Honor, this evidence  
7 is, has been accepted by courts time and again as this  
8 pattern and practice evidence and there are cases on that  
9 issue.

10 There is a Patterson case that I can find  
11 and cite to that says that this type of evidence is  
12 permissible because it shows the pattern of misconduct of  
13 these officers which weighs on each case before them.  
14 It's evidence that was not known at the time of trial and  
15 so could not have been brought up at that time because  
16 it's been developed over a number of years, and it shows  
17 what their procedure was, what their practice was, and  
18 why that is the same thing that happened in this case.

19 And here we're talking about in terms of  
20 Aurelio Martinez. So what they did over their long  
21 careers where this pattern and practice has been proven  
22 in courts is very similar to what they did here. There  
23 is a substantial nexus, as we call it, as the cases point  
24 to, that that's what they did here, and that explains why

1 Aurelio Martinez has not yet recanted his statement.

2 THE COURT: So my view of this is that -- my view  
3 of that is this. I have never in any of these cases  
4 involving Detective Guevara or any other detective or  
5 police officer where it has been alleged has engaged in  
6 this kind of conduct in the past, I have never in  
7 determining any, any of these cases, looked at that  
8 conduct in the past and said because of the allegations  
9 of what they done in the past, that means that that's  
10 what happened in this case. I've never done that.

11 There are cases where Detective Guevara  
12 has been involved where I have denied a certificate of  
13 innocence. So I sitting here as the arbiter of the law  
14 and the trier of fact do not look at that modus operandi  
15 and attach those words to, to this purported conduct. I  
16 don't look at this and say, well, then that's what  
17 happened in this particular instance.

18 Certainly counsel can make that argument  
19 and the court could consider it for whatever it's worth  
20 and that's what I do. If it may impact upon that  
21 person's credibility and whether or not I believe or  
22 whatever it is they said in a particular matter or I use  
23 it for some other purpose.

24 But rest assured, Mr. Horvath, and

1       counsel, in any of these cases, counsel have almost in  
2       every case involving Guevara or other officers where this  
3       conduct has been alleged, I'll get recitation of all the  
4       cases where they say this has happened. They're free to  
5       make that argument, but each case is going to rise and  
6       fall on its own merits.

7               MR. HORVATH: Thank you, your Honor.

8               MS. MYERSCOUGH-MUELLER: Thank you, Judge.

9                       So as I was saying, there is a long line  
10       of cases in exonerations that support this pattern and  
11       practice of abuse that we have been talking about. The  
12       courts have established that the pattern and practice of  
13       abuse includes not verifying anonymous tips, tampering  
14       and manipulating witnesses in line-ups, torturing and  
15       coercing false confessions, falsifying police reports and  
16       framing innocent people for murder.

17                      In Ricardo's case we see a fabrication of  
18       an anonymous tip, witness manipulation and coercion,  
19       falsifying police reports and framing innocent people for  
20       murder. And there, as I said, there are a number of  
21       cases. A lot of them are listed in our pleadings so I  
22       won't belabor that point. But there are a lot of cases  
23       that started with this claimed anonymous tip that never  
24       existed, just so that the detectives could focus on the

1 suspect as they wanted to.

2 In each of these cases with these 20  
3 innocent men that have had their convictions vacated or  
4 overturned after they were framed for crimes they didn't  
5 commit by Detective Guevara and sometimes Halvorsen  
6 involve falsifying police reports and some form of  
7 manipulating witnesses and tampering with line-ups.

8 I'm sure also that this court is well  
9 versed in Judge Obbish's finding that Detective Guevara  
10 told bald-face lies in his courtroom. He said that he  
11 couldn't give an ounce of credibility to him, that he was  
12 given immunity to testify in front of him under oath and  
13 still lied, and that he had, quote, eliminated any  
14 possibility of him being considered a credible witness in  
15 any proceeding.

16 So your Honor, now instead of explaining  
17 his actions and standing by his investigations in this  
18 case, Detective Guevara has now taken the 5th in this  
19 case on questions about this matter. He was asked  
20 questions about his specific conduct and the  
21 investigation and had the opportunity to answer what he  
22 did and did not do, but instead he invoked the 5th and  
23 does not stand behind his investigation in this case.

24 He took the 5th on whether he lied about

1 an anonymous tip. He took the 5th on whether he coerced  
2 Zaragoza to falsely identify Ricardo. He took the 5th on  
3 whether he coerced Martinez to falsely testify, falsely  
4 testify and identify Ricardo. He took the 5th on whether  
5 he falsified police reports. And he took the 5th on  
6 whether he framed the innocent Ricardo Rodriguez.

7 Because this proceeding is civil, the  
8 court can and should draw a negative inference from  
9 Detective Guevara's invocation of his 5th amendment  
10 right. There are cases on this very matter, Judge,  
11 including People versus Whirl, which is 2015 Il App 1st  
12 111483, saying that a court should draw a negative  
13 inference unless there is a good reason not to.

14 Here there is every reason to draw that  
15 negative inference. One of the two State's witnesses has  
16 recanted and described those pressures by Guevara in this  
17 case. It fits in exactly with that pattern and practice  
18 of abuse we have been talking about.

19 And according to People v Gibson, which is  
20 2018 Il App 162177, the court said that as long as there  
21 is some evidence to support the complainant's  
22 allegations, a court may consider a party's refusal to  
23 testify as further evidence of the alleged misconduct.

24 Guevara's insistence on taking the 5th to

1       each of the questions in this case supports that he lied  
2       about that anonymous tip. It supports what Zaragoza has  
3       sworn to, that he was pressured and coerced to falsely  
4       identify Ricardo. It supposed that Guevara falsely  
5       identified police reports. It supports that he framed  
6       Ricardo, a man he knew to be innocent, and it supports  
7       that Martinez, the State's only remaining witness, their  
8       Hail Mary, was coerced to falsely identify Ricardo just  
9       like Zaragoza was and just like so many others have been  
10      in these other cases.

11           MS. THOMPSON: I want to talk now, your Honor, about  
12      the evidence that the State is offering to say that Mr.  
13      Rodriguez doesn't meet his burden.

14           THE COURT: I am going to do this -- all right. I  
15      am going to interrupt you and I am going to pass the case  
16      once again, allowing me an opportunity to hear a few  
17      other cases, and then I will ask you all to return.

18           MS. THOMPSON: Thank you, your Honor.

19           THE COURT: I thank you for your indulgence.

20                   (WHEREUPON the case was passed.)

21                           \* \* \* \*

22           MS. THOMPSON: As I said, your Honor, I want to  
23      address the evidence that the State is relying on to tell  
24      you that you should not grant the COI petition. And



1       primary, I want to save some time for rebuttal to address  
2       whatever they say in response.

3               But I'd like to say a few words about that  
4       issue, and obviously if the court has any questions here  
5       about the other factors that Ms. Myerscough-Mueller  
6       talked about, in particular, the bringing about Mr.  
7       Rodriguez's own conviction prong, I want to answer them.

8               But as she said, I don't think that really  
9       anything is in dispute here other than whether Mr.  
10       Rodriguez has met his burden to show by a preponderance  
11       of the evidence that he's innocent. That's the issue  
12       here, and it's a preponderance standard. It's a  
13       balancing question for the court.

14              And so what Ms. Myerscough-Mueller has  
15       just laid out to the court, the evidence that is on the  
16       side of evidence, Ricardo Sierra, Rudolfo Zaragoza, Mr.  
17       Rodriguez's alibi, all of the evidence that says he is  
18       not the person who committed this shooting. So what is  
19       the State going to tell you? What is the State going to  
20       tell you that is the reason that you shouldn't grant this  
21       certificate of innocence in light of that evidence of  
22       innocence which we believe puts us above that  
23       preponderance line in terms of the burden?

24              Well, I think what they're going to tell

1       you and what they focused on in their pleadings is this  
2       witness Aurelio Martinez, so I'd like to talk about him  
3       for a second.

4                   What Aurelio Martinez testifies to at  
5       trial is that he is out drinking that night and he admits  
6       that he had been out since 7 p.m. He claimed at trial  
7       despite being out from 7 p.m. until shortly before 1:30  
8       a.m., which is about when the shooting happens and about  
9       when he finds himself standing in front of his apartment  
10      with Rodney Kemppainen and the victim and this other man,  
11      Kenneth Rudy, at the time of the shooting. He said  
12      during that entire time he only had two drinks, and that  
13      may or may not be true. But this shooting happens at a  
14      very early hour on a Saturday morning after many people  
15      involved in this case had consumed some alcohol, Mr.  
16      Martinez among them.

17                   And he testified that he had, you know, an  
18      opportunity to view the shooter and obviously has never  
19      recanted that testimony. And I think that's what the  
20      State is going to tell you, that you should credit what  
21      Mr. Martinez had to say.

22                   My colleague already went through some of  
23      the issues with Mr. Martinez in terms of the  
24      circumstances of his identification, and I wanted to talk

1       about that just a little bit further because it's  
2       important here. And it also explains why it is in this  
3       particular case what Detective Guevara refused to answer  
4       in taking the 5th and what his history has been is  
5       particularly important.

6               I appreciate what this court said, that  
7       the court wants to take each of these matters  
8       individually even if they involve the same officers, and  
9       from Mr. Rodriguez's perspective, that makes sense  
10      because his is a singular case. It's a case in this  
11      pattern where for this court to credit Martinez, for this  
12      court to conclude that Mr. Rodriguez hadn't met his  
13      burden, that necessarily requires this court in some way  
14      to give credit to Detective Guevara and Detective  
15      Halvorsen's detective work in this case.

16             The court can't get around that if the  
17      court is going to credit what Mr. Martinez said, and the  
18      reason why is this. Aurelio Martinez is contradicted by  
19      Ricardo Sierra, who my colleague already talked about,  
20      who really has no reason to lie here and no reason to  
21      come forward all these years later to help someone who in  
22      his estimation is a member of a rival gang who killed  
23      someone that Mr. Martinez testified in his affidavit that  
24      he was friendly with and cared about. Aurelio Martinez

1 is contradicted by Rudolfo Zaragoza.

2 Now, Mr. Martinez and Rudolfo Zaragoza did  
3 not have the same exact view of these events. And if the  
4 court recalls or will see in their testimony, as I said,  
5 Mr. Martinez is standing outside this apartment building  
6 on Hamlin. It's the apartment where Mr. Martinez lived  
7 with the victim or with the victim and Mr. Rudy when the  
8 shooting happens.

9 What these witnesses said at the scene was  
10 that this car comes down Hamlin, does the shooting where  
11 Mr. Martinez and the other people are, then swings around  
12 the corner on North Avenue. And what Mr. Zaragoza  
13 testified to is independent of Mr. Martinez, independent  
14 of the rest of these people. He's crossing North Avenue  
15 when he intersects with that car. So he's got a  
16 different view and maybe that is that something the State  
17 is going to tell you means that what Mr. Zaragoza says  
18 has no connection to what Mr. Martinez said.

19 The problem with that is the method by  
20 which they both reach their identifications, one of which  
21 is recanted and one of which is not, is exactly the same.  
22 Both of them look at gang books pretty soon after the  
23 shooting and are unable to make an identification.

24 And we would say, you know, Mr. Rodriguez

1 doesn't have evidence of this because these gang books  
2 aren't here for this court to look at, but it stands to  
3 reason that Mr. Rodriguez, who all the police reports say  
4 was known to be a Spanish Cobra was certainly known to  
5 Guevara and Halvorsen because their police reports talk  
6 about it, that if they showed these men gang books  
7 containing Spanish Cobras in the area, that Mr.  
8 Rodriguez's photo would have been in there.

9 And I will admit to the court, it's not  
10 something that Mr. Rodriguez can prove, but it stands to  
11 reason his photo was in these books. They look at these  
12 books and make no identification. And at that point,  
13 your Honor, this case is DOA. There is no evidence of  
14 who the shooter is. There is no physical evidence to  
15 follow up on. There is no identifications. There is an  
16 extremely generic description of a person in a car that  
17 went down Hamlin and around the corner at a high rate of  
18 speed.

19 That car, by the way, doesn't match the  
20 car that Mr. Rodriguez drove. There's police reports  
21 where they're looking for Mr. Rodriguez where they  
22 describe him having a black car. The witnesses say this  
23 is a light blue car.

24 So there is nothing at all that connects

1           this shooting to Mr. Rodriguez whatsoever. There is no  
2           evidence that he is the guy here. There's nothing. This  
3           case is done.

4                       Then Guevara and Halvorsen say, and Mr.  
5           Guevara testified, that they get this tip that connects  
6           to Mr. Rodriguez. And when they get this tip, that's  
7           when they go back to Zaragoza and Martinez and show them  
8           arrays. And what Mr. Martinez says in his testimony and  
9           is reflected in the police report, that even when he  
10          looks at the array of Mr. Rodriguez, he says, "I need to  
11          see a line-up to be sure." So then Guevara takes him to  
12          the line-up and it's there that he makes an  
13          identification of Mr. Rodriguez.

14                      That array, that line-up, never happened  
15          unless there is this purported tip to put Mr. Rodriguez  
16          on the radar, and there is never any corroboration of any  
17          of these identifications from either Mr. Zaragoza or Mr.  
18          Martinez. Other than that, they're both making the I.D.s  
19          They're in different places. They're both making the  
20          I.D.s.

21                      As my colleague said, Mr. Zaragoza recants  
22          almost immediately after trial, and he does that, you  
23          know, first in 1997. So if the court is going to  
24          disbelieve that recantation and disbelieve what he says,

1           even in those reports where he is describing exactly what  
2           Guevara is accused of later exactly where, you know, we  
3           get this pattern evidence and all of this very public  
4           evidence about Guevara, I guess Mr. Zaragoza can either  
5           see into the future and foresee some day Mr. Guevara is  
6           going to be accused of doing the same thing by a lot of  
7           other people or else he is telling the truth when he said  
8           clear back in '97 before anybody knew about any of this,  
9           that, "Hey, this is what happened to me, Guevara  
10          pressured me to make this identification." You know,  
11          that is what Mr. Zaragoza says.

12                       And I will add as an aside that I think  
13          the State and I agree that I at least have looked into  
14          Mr. Zaragoza. We concluded that he is deceased. And I'd  
15          make that representation to the court. There is no  
16          evidence that he is alive. Certainly, if Ricardo  
17          Rodriguez could bring Mr. Zaragoza before this court, he  
18          would. It just took Mr. Rodriguez too long to get his  
19          conviction vacated for Mr. Zaragoza to ever get to  
20          testify to anybody. So the court has got to rely on Mr.  
21          Zaragoza's words and two affidavits. But he was saying  
22          this long before it was ever publicly known about what  
23          people were saying that Guevara did. And squaring what  
24          Mr. Zaragoza says about his experiences with Guevara and

1 Halvorsen with what Mr. Martinez, you know, has never  
2 recanted what he said at trial, about making this I.D.,  
3 those things just don't fit together.

4 So if the court is relying on Martinez,  
5 you have to discount Mr. Sierra. There's got to be a  
6 huge discount of Zaragoza who is describing something  
7 very different from Mr. Martinez.

8 And that does lead us to Mr. Guevara  
9 taking the 5th. And my colleague has already explained  
10 to the court what he took the 5th about. But Mr. Guevara  
11 had an opportunity to confirm that, you know, his conduct  
12 with Mr. Martinez was fine and he didn't do that.

13 And whatever the court thinks about the  
14 pattern, it's really the 5th here that is the issue. The  
15 court has to draw that inference unless there is a good  
16 reason not to do so, and here, there is no reason not to  
17 draw that inference. And that is partly why this pattern  
18 evidence, partly what Mr. Zaragoza is saying is  
19 important, because that is what gives the court reason to  
20 draw the inference.

21 I don't know exactly what the State is  
22 going to say to expand on the argument I just made, which  
23 seems to be that because Mr. Guevara is taking the 5th to  
24 anything, that this court should somehow, you know, give



1 his 5th, his exercise of the 5th less credibility.

2 All Mr. Rodriguez can do is ask him  
3 questions in his own case, and it is not the State's  
4 burden to prove anything. So where Mr. Rodriguez has  
5 presented affirmative evidence of his innocence, if the  
6 State is going to try to discredit that, they've got to  
7 have evidence from somewhere to say what Mr. Rodriguez  
8 has presented is wrong.

9 Mr. Guevara is not a source for that  
10 because he doesn't even want to talk about this. He  
11 doesn't even want to talk about what's happened. And in  
12 a situation where all signs point to Mr. Rodriguez and  
13 his identification having been coerced just like Mr.  
14 Zaragoza says that he was, Mr. Guevara taking the 5th is  
15 an important piece of evidence that this court should  
16 take into account. There is not a reason to credit Mr.  
17 Martinez in a situation where Detective Guevara is taking  
18 the 5th about these issues.

19 I want to say too on the issue of  
20 Martinez's credibility, that if what the State is saying  
21 is, you know, Mr. Zaragoza is around the corner so it  
22 doesn't really matter what he saw connected to Mr.  
23 Martinez, as my colleague alluded to, Kenneth Rudy, who  
24 is the other witness that's there with Mr. Kemppainen and

1       there with Mr. Martinez, all right in front, you know, he  
2       says he just sees muzzle flashes. He's not able to make  
3       an identification and he is not a person that police,  
4       when Guevara and Halvorsen get this supposed tip and when  
5       they're going back to show arrays to people, there is no  
6       evidence that they go back and show an array to Mr. Rudy.  
7       And we don't know why that is.

8               But what we do know is that Mr. Rudy  
9       essentially has the same vantage point as Mr. Martinez  
10      and he's not able to make an I.D. He is never testifying  
11      that there is an I.D. to be made. That makes sense in a  
12      situation where a car is driving by doing the shooting,  
13      apparently so quickly that it's shooting at people who  
14      aren't even gang members, because Mr. Martinez said he is  
15      not one. Mr. Kemppainen and Mr. Rudy were both homeless  
16      people in the area. They were older people. There is no  
17      real reason to believe that they had involvement in  
18      gangs.

19             It stands to reason that a person doing  
20      the shooting, going around that corner at a high rate of  
21      speed is not something who Mr. Martinez is going to get a  
22      great look at, and yet we have this testimony. And the  
23      only way you can explain this testimony in context of all  
24      of this is the identification is not credible and that it

1 is not credible enough to stand against all of the  
2 evidence of Mr. Rodriguez's innocence, because that is  
3 really the issue here.

4 When you do that balancing, what do you  
5 believe? If you are believing that Mr. Rodriguez has not  
6 met his burden, and if you're believing Mr. Martinez,  
7 then the court is crediting the police work of Guevara  
8 and Halvorsen. The court is crediting the idea that this  
9 tip ever occurred. The court is crediting these  
10 identification procedures that they engaged in. And  
11 there simply is not enough there.

12 I want to come back in rebuttal to address  
13 what else the State is going to say, but this is not  
14 really a Martinez versus everything else. This is  
15 Guevara and Halvorsen versus everything that we know  
16 about them, about this individual case. And in that  
17 situation, Mr. Rodriguez has met his burden, your Honor.  
18 He spent 23 years in prison. He deserves a chance to  
19 really be free of this case, to be free of the stigma of  
20 this conviction, and to be able to move forward, and that  
21 is why he has asked for a certificate of innocence and  
22 why the court should grant it.

23 THE COURT: Ultimately, Ms. Thompson, whether or not  
24 to grant, the burden still remains upon Mr. Rodriguez to

1 show his innocence. And so I appreciate your argument as  
2 it relates to Mr. Guevara and his tactics, and I think  
3 that certainly those may be indicia that the court may  
4 consider.

5 But ultimately, so for example, I don't  
6 believe I've heard either of you speak to, with any, in  
7 any detail, about Mr. Rodriguez's alibi. You mentioned  
8 earlier that there was an alibi, and as I read through  
9 your papers, the alibi seems to be that he was with his  
10 mom that particular night.

11 But as does happen all too often in these  
12 matters, there is this great deal of focus on Guevara or  
13 some other officer who's committed some malfeasance, when  
14 I don't think that that factor alone is enough for your  
15 client to sustain his burden. It is, as I said, it's a  
16 factor perhaps for this court to consider.

17 So I took a little, I was a little -- I  
18 wasn't quite on board with you, Ms. Thompson, when you  
19 spoke about if the court -- I'll paraphrase you -- but if  
20 the court looks at the argument or the evidence one way  
21 then the court is obviously, my own word, the court is  
22 obviously crediting Guevara's police work or Guevara's,  
23 validating his credibility in the matter, and I don't  
24 think necessarily so.

1                   I think ultimately as I go through the  
2                   analysis, I nonetheless require the petitioner to sustain  
3                   his burden. And so you've -- we spent a great deal of  
4                   time talking about Guevara and how poor his police work  
5                   and his malfeasance, but what are these other things?

6                   MS. THOMPSON: I appreciate the court's questioning  
7                   and I don't think I've done my job yet, so let me say  
8                   this. It's Mr. Rodriguez's burden, absolutely. And Mr.  
9                   Rodriguez is not just saying, "Hey, Guevara and  
10                  Halvorsen, not good detectives, so therefore I win."  
11                  We're not saying that.

12                  We're saying this. There are various  
13                  eyewitnesses to this shooting, and the court has evidence  
14                  of the perspectives of each one of those witnesses. It  
15                  has Ricardo Sierra who is coming down the street at the  
16                  time of the shooting who gets a look at that car, who  
17                  knows Ricardo Rodriguez from the neighborhood, even  
18                  though they're in opposite gangs, and says, "I saw the  
19                  shooter, it's not Ricardo Rodriguez." That's what he  
20                  says. So that's a person saying Ricardo Rodriguez is  
21                  innocent.

22                  The court has Rudolfo Zaragoza. He is  
23                  around the corner but in the vicinity of this shooting  
24                  and he was shot at himself. He says -- he says, "I get a

1 look at that car. I see the driver, yeah, before at  
2 trial and in this, in these identification procedures. I  
3 said it was Ricardo, but that's not true. I'm confident  
4 it wasn't Ricardo Rodriguez." That's what he said in the  
5 second of his two affidavits. So that's not a person  
6 that supports his guilt. That's a person saying  
7 Rodriguez is innocent.

8 The court has Kenneth Rudy who is in the  
9 police report. And Kenneth Rudy says, you know, "I don't  
10 know." I mean he doesn't make an identification. He  
11 says he sees muzzle flashes and is not really able to  
12 give a description. And he is never shown an array,  
13 never shown a line-up, and why that is, all of us can  
14 only speculate.

15 But when Guevara and Halvorsen decide to  
16 go back to them, he is not among them. He is not a  
17 person that supports guilt, and he provides no evidence  
18 that would say Ricardo Rodriguez is responsible.

19 Then the court has Aurelio Martinez, and  
20 Aurelio Martinez testified at trial it was Rodriguez.  
21 And we've given you all the reasons to say, "Yeah, I mean  
22 that's what he's saying, but to me when I weigh this  
23 against the other people, it's not enough."

24 And to go to Mr. Rodriguez's affidavit for

1 a minute, there is an affidavit attached to the petition,  
2 which is Exhibit 5, which is from Mr. Rodriguez's mother.  
3 She signed that affidavit in 2002, and she said that Mr.  
4 Rodriguez was home that night.

5 Now, she is elderly at this time. She's  
6 here. We're not putting her on the stand because she  
7 gave an affidavit at a much earlier time when her memory  
8 of this was clear. And she says he was home, and that's  
9 also evidence of his innocence.

10 So I agree. The certificate of innocence  
11 statute is here because you've got to do more than just  
12 show "I shouldn't have been convicted." And on "I  
13 shouldn't have been convicted," you know, there's no  
14 question here, Ricardo Rodriguez shouldn't have been  
15 convicted.

16 But he's shown a lot more than that. He  
17 said, "Look at what the people at the scene say. People  
18 at the scene are saying I didn't do this, and the person  
19 who is saying that I was the shooter is unworthy of  
20 belief" for all the reasons I articulated.

21 Don't grant the certificate because  
22 Officer Guevara, you know, is a liar and is a person that  
23 stands on the 5th today about the events of this case.  
24 Grant him a certificate of innocence because of all the

1 witnesses who say he didn't do this, and because the one  
2 witness who persists in his old identification is not  
3 worthy of belief because their identification has always  
4 been and remains tainted by what Guevara and Halvorsen  
5 did. That's what Mr. Rodriguez is telling this court.

6 THE COURT: Thank you. Mr. Assistant Attorney  
7 General, let me hear from you.

8 MR. HORVATH: Yes, sir.

9 So once again we're presented with a case  
10 in which there are several affidavits and no direction  
11 from the 1st district on how to take those affidavits  
12 into evidence or in evidence at all.

13 As you know, the Fields matter says you  
14 have to take into consideration everything into the  
15 certificate of innocence. So I will go ahead and  
16 concede, at least under that, that these are admissible,  
17 but I want to talk about the weight of these affidavits  
18 as your Honor indicated the weight in this case, because  
19 I have a few things that I think your Honor might be  
20 interested in.

21 As I look at the three affidavits, the  
22 three sets of affidavits, there's Zaragoza's, there's  
23 mom's and then there's Sierra. Okay. And I refer to  
24 these affidavits as essentially the suspect, the



1           ineffectual, the fraudulent; Zaragoza's being suspect,  
2           the mother's being ineffectual as the mom, and Sierra's  
3           being fraudulent. I'll get to Sierra's last.

4                       What I want to know is, if I show this  
5           court evidence, which I don't have to, but if I present  
6           evidence which the court can see with his own eyes, to  
7           see that Mr. Sierra could not see what he says he saw,  
8           then in fact you could see with your own eyes what then,  
9           what then of their case because they've asked you to take  
10          a negative inference with respect to Guevara.

11                      But what if there is an affidavit  
12          submitted to your Honor which is clearly fraudulent?  
13          What then of a negative interest? And I'll get to that  
14          in a minute.

15                      So let's talk about Zaragoza for a minute.  
16          So Rudolfo Zaragoza, so I would agree with Ms. Thompson,  
17          it would appear he is deceased. He has been off the grid  
18          for at least 16 years. He comes forward with this new  
19          affidavit. And I'm going to refer to an exhibit and I  
20          believe your Honor has them.

21                      THE COURT: I do.

22                      MR. HORVATH: And I know your Honor reads these  
23          very carefully. If you need to follow along, great; if  
24          you don't, that's fine.

1                   His first affidavit comes post conviction  
2           and before Mr. Rodriguez -- and this is, Judge, this is  
3           exhibit -- my apologies for the record.

4                   THE COURT:   People's Exhibit No. 3.

5                   MR. HORVATH:   Three.   Yes, sir, that's correct.

6                   So his first affidavit at least is sworn  
7           and subscribed to on May 14, 1997, which is prior to the  
8           date that counsel's client was convicted prior to his  
9           post trial.   And there is two relevant statements in  
10          there.   One is, it might not be him.

11                   Now, that statement could be taken one of  
12          two ways.   It could be him or it could not be him.  
13          Zaragoza is now saying he doesn't know.   This is in 1997.

14                   The second statement that he attributes  
15          to, and I'll concede sounds like it might have been  
16          Guevara but we actually don't know, is "This guy right  
17          here is Casper from the Cobras.   He is locked up now."

18                   Now, the problem I have in trying to  
19          defend it, although I don't, is we don't have the one  
20          great truth teller at our disposal -- and that is no  
21          fault to Ms. Thompson -- and that is contemporaneous  
22          cross-examination with respect to these affidavits.

23                   But I for one would like to know the  
24          context in which he provided this affidavit.   For

1 instance, he testified that he was from the area, from  
2 the area where the shooting occurred, which was also an  
3 area, the record will reflect, is where, just adjacent to  
4 where the petitioner was, a rival gang.

5 So the question I have, and I'd like to  
6 ask Mr. Zaragoza if I could, was, did you have a problem  
7 when you went back to the neighborhood? Did you have to  
8 explain your conduct taking a stand, you a former gang  
9 member? That's in the record. Was there any issue when  
10 you returned to the street that would have given you some  
11 motivation to come off your testimony earlier? We don't  
12 know that. We don't know that through no fault of Ms.  
13 Thompson. We just don't know that. He was never  
14 cross-examined on those affidavits.

15 The other thing he says, though, which is  
16 interesting -- and again, the context is interesting,  
17 Judge, because he says, you know, this guy right here is  
18 Casper from the Cobras, he is locked up right now.

19 Well, Mr. Zaragoza's trial testimony is  
20 that he knew Rodriguez, at least from sight, that he knew  
21 as leader of the Spanish Cobras' gang that he has seen  
22 before. He testified to that before that even on  
23 cross-examination.

24 So what I would like to ask Mr. Zaragoza

1 is, if I could, is, did you pick him out and then express  
2 concerns to one of these detectives you're going to have  
3 a problem getting back to the street if you identify this  
4 guy, and then if someone says "don't worry, he's locked  
5 up," is that what really happened or is that a nefarious  
6 statement? We don't know that, Judge. We don't know  
7 that.

8 But we know in 1997 that's as far as he  
9 was willing to go is say "I'm not certain and a statement  
10 was made to me" which could appear on the face to be  
11 untoward but we don't know the context. It might not be  
12 untoward at all.

13 Now, again, I have an issue with  
14 affidavits, but this is the position we're in. This  
15 affidavit of course was drafted by Mr. Rodriguez's trial  
16 attorney. And I impute no ill will or any suspect  
17 motivation on his behalf. But he is trying to get Mr.  
18 Zaragoza to get as far afield from his testimony as  
19 possible. I mean that's his job. He doesn't believe Mr.  
20 Zaragoza's testimony, so he goes to Mr. Zaragoza and does  
21 his best to convince him to come off his testimony. It  
22 happens all the time. I'm not suggesting anything. But  
23 is that as far as he would go? I don't know. So again,  
24 I don't know what we can do about that affidavit.

1                   But here comes the second affidavit and it  
2           makes it very suspect to me. In 2002, now it's "I'm  
3           100 percent certain it's not Casper." Five years later,  
4           100 percent certain it's not Casper. And it's, quote,  
5           strongly hinted to me to I.D. Casper.

6                   I have a very simple question of Mr.  
7           Zaragoza. How in the world do we get there five years  
8           later? I mean there is no question that the same  
9           attorney, presumably the same attorney was trying to get  
10          you to come off your first affidavit as best as you  
11          could. What happened in those five years? I think  
12          that's suspect, Judge.

13                  We know the first affidavit wasn't good  
14          enough. It was rejected, rejected by the trial court.  
15          It was rejected by the court of appeals. Now here comes  
16          Mr. Zaragoza with a second affidavit. Why the second  
17          one? Why such a change in tune? We don't know, Judge,  
18          we don't know the context of it, and that goes to the  
19          weight of the evidence. There are simply questions that  
20          this court cannot determine based on what's presented  
21          here. And again, no fault to Ms. Thompson.

22                  But we just don't know. It's suspect.  
23          Something is not right with this affidavit. There is  
24          something underlying in this affidavit. I don't know

1           what it is. But on the face of it, suspect, and the  
2           weight to be afforded to it should be very well.

3                   I'd also mention one more thing, Judge.  
4           The appellate court. There were two appeals in this  
5           case. The first appeal went to the police misconduct and  
6           issues of that matter. The appellate court, and I don't  
7           know if they were quoting the trial court so I have to  
8           apologize.

9                   But the appellate court said Zaragoza's  
10          recantation was, quote, grave doubt. That's what it says  
11          at the trial court, with grave doubt. Now, I don't know  
12          if that was the appellate court's language or the trial  
13          court, but somebody viewed it with grave doubt.

14                  And then there comes the second affidavit.  
15          The State has a problem with that. The State would like  
16          to know what's going on there. The ineffectual, Judge,  
17          Mom's affidavit. I mean no disrespect to mothers, I have  
18          one as well, but the affidavit is both suspect and  
19          ineffectual, and here's why. First, why are you coming  
20          in 2002 to tell us about your son if you had an alibi?

21                  Now, I used to be a prosecutor. I've also  
22          defended criminals in court, all types. One of my  
23          favorite excuses I always heard was, "the public defender  
24          didn't want to hear it, they didn't contact me." That's

1           what she said in the affidavit, right? "Nobody contacted  
2           me."

3                       Well, I'm fairly certain that five years  
4           earlier if you knew your son was on trial for first  
5           degree murder, She didn't come forward to anybody? I  
6           don't know about this mother, but I know mothers that  
7           would make it real clear to the public defender's office,  
8           to the private attorney and to the court if necessary and  
9           under contempt for however loud they have to do it, that  
10          in fact "I'm a witness to this case and I have an alibi  
11          for my son." She doesn't bring that forward in 1997,  
12          1998 or -- excuse me, '96, '97, '98? She just comes  
13          forward in 2002 and she throws the defense attorney under  
14          the bus as an explanation.

15                      The ineffectual part of this objection is  
16          actually what she says in her testimony. She says that  
17          her son comes home that night and she suggests to him,  
18          "It's too cold, you need to stay inside." She locks up  
19          the house. She goes back to sleep. I believe this is  
20          around 11 o'clock, I believe, is her testimony, Judge.

21                      And I have to apologize, I don't want to  
22          misstate it on the record. Just before a little before  
23          11:00 p.m. she says her son comes home -- and this is  
24          Exhibit No. 5 -- she says she locks up and goes to sleep

1           and her son is there the next morning.

2                       Well, Judge, this shooting occurred just  
3       blocks away from the house. The record is real clear and  
4       it's not disputed that Ricardo Rodriguez lived in the  
5       adjacent neighborhood of where the shooting occurred at  
6       1604 Hamlin. So he's right down the block.

7                       But where is Ricardo Rodriguez at 1:48  
8       a.m. is what I want to know. She can account for him at  
9       11. She can account for him the next day. Is the  
10      affidavit to be read that she locked in her son in the  
11      whole night and he didn't get out? I think the fire  
12      department would have a problem with that.

13                      But I'm pretty sure that her son, who is  
14      the leader of the Spanish Cobras, didn't always listen to  
15      mom. That's probably how he got to be leader of the  
16      Spanish Cobras.

17                      So her affidavit is a little suspect, and  
18      evidentiary speaking, it's ineffectual. It does not  
19      account for her son's whereabouts at 1:38 a.m. on that  
20      15th -- excuse me, yes on that day in December. It just  
21      doesn't -- it's ineffectual.

22                      But Judge, my -- the most interesting  
23      affidavit of all, the most interesting -- you know what?  
24      Judge, I apologize. I apologize for disjointing this. I



1           want to turn to Mr. Zaragoza for a minute because it  
2           actually came up in the exhibit. I do want to turn to  
3           it.

4                       Mr. Zaragoza views a photographic line-up  
5           after he views gang books and the gang books didn't show  
6           the individual he already knew, Ricardo Rodriguez. So if  
7           he'd seen Ricardo Rodriguez in the gang books, it's  
8           presumable he would have identified him, which lends  
9           credence to the fact that maybe he wasn't there, which  
10          lends credence to the fact of why if it's in the exhibits  
11          why Guevara is taking a picture of Ricardo Rodriguez.  
12          And I can return to that in surrebuttal, but I'm going to  
13          stay away from Guevara stuff for a little bit.

14                      But my point is this. So after about  
15          three and a half weeks after Zaragoza identifies -- I  
16          think it's on the 27th of December -- identifies Ricardo  
17          Rodriguez in a line-up, he then goes to a show-up, a  
18          show-up of Ricardo Rodriguez. Now, I suppose the  
19          argument is going to be well, that line-up -- excuse me,  
20          that photo array tainted the subsequent identification at  
21          the line-up. All this is in the exhibits, by the way.  
22          It's all a matter of record that Zaragoza then did a  
23          line-up and identified Ricardo Rodriguez.

24                      But it was three and a half weeks later.

1           It wasn't by a homeless man who did drugs. There was a  
2           lot of life lived by Mr. Zarazoga between the 27th of  
3           December and when he did this line-up about three and a  
4           half weeks later.

5                       The most interesting thing about what  
6           occurred in that line-up -- and again, it's in  
7           Exhibit 12, Judge -- if he was incarcerated on another  
8           matter apparently in Cook County lock-up, and when he  
9           came up to view that line-up, he wasn't alone, Judge. He  
10          had his public defender with him, Cathy Wall, the late  
11          Cathy Wall.

12                      So the question is, if the allegation is  
13          that Zaragoza was going for shenanigans, he had a perfect  
14          opportunity to put a stop to it, at least if not then  
15          beforehand when he is speaking to Ms. Wall. This is very  
16          important too. There is no allegation that it didn't  
17          happen that Zaragoza was given any, that Zaragoza was  
18          charged in this offense or had a case hanging over him by  
19          the State that they were using to flip him, so to speak.  
20          There was no untoward pressure by the state's attorney.  
21          Zaragoza was locked up on a different charge and he was  
22          brought up with his public defender on that charge and  
23          made an identification.

24                      The allegation against Guevara is always

1           that he also does these things on his own, that he  
2           tramples on people's rights, all these kind of things.  
3           But he allows it. It's at a police station. He doesn't  
4           do it in a surreptitious manner. But he allows the  
5           public defender to come up with her client and make that,  
6           that identification in the show-up.

7                       He was under no legal obligation to do it.  
8           Mr. Zaragoza was incarcerated on a different case. So it  
9           wasn't like he had to notify the public defender, he had  
10          to go to the state's attorney and say, "You know, hey,  
11          I've got to have somebody who is incarcerated on this  
12          offense come up with the identification in this offense  
13          and he is a representative." It wasn't that case.

14                     So you know, they go on the photo line-up,  
15          but I'm -- what about the identification three and a half  
16          weeks later when your public defender is sitting right  
17          there on another matter, you know? But there is no  
18          hesitancy in that identification. There is nothing to  
19          impugn that identification. It's only the suspect  
20          affidavits that impugns the identification.

21                     So I thought that was an interesting note  
22          that's in the exhibits, the fact that he was actually  
23          represented at the show-up. I found that to be  
24          something.

1                   Let me get back on track. Ricardo Sierra,  
2           that is the fraudulent. Ghandi, that's his nickname.  
3           Candidly, Judge, this affidavit smells a little bit.  
4           Twenty years later here comes Ghandi after, of course,  
5           Zaragoza, who presumably Ghandi would know because he  
6           lives in the neighborhood with him is deceased.

7                   Now, let me be very clear about something,  
8           very, very clear. Counsels have a good reputation in my  
9           office. I'm not impugning their reputation whatsoever.  
10          I'm not suggesting that the Exoneration Project is behind  
11          any fraudulent affidavit. That's not my point. I'll  
12          make my point in a minute about why this is fraudulent  
13          but impute no wrongdoing to them, okay?

14                   But this is a fraudulent affidavit. This  
15          is a lie, okay? So Ghandi comes back in 2016 out of  
16          nowhere and says, "I'm there." Well, the thing I want to  
17          know is, how did Ghandi even come to light anyway? He is  
18          not here again to be contemporaneously cross-examined,  
19          right? So we don't know what the issue is. We don't  
20          know how it came about.

21                   We know an investigator went to speak to  
22          him. How did the investigator know? Who told the  
23          investigator Ghandi would have information about this?  
24          We don't know. We don't know any of these things. We

1           don't know how this affidavit came to light. But I might  
2           shed some light on it in a moment but maybe I won't.

3                       He also recalls in 2016 extremely vivid  
4           details. How did he know that? A gang member that lives  
5           in a pretty violent neighborhood, he admits to drinking  
6           that night. Perhaps he was doing drugs. Who knows?  
7           Perhaps he did drugs in the 20 years intervening. We  
8           don't know, we don't know. It all goes to weight.

9                       And what about his bias? What about his  
10          bias? I'd like to ask him about his bias, because in his  
11          affidavit he references a couple people. And this your  
12          Honor can take judicial notice, in paragraph 16 of his  
13          affidavit he references individuals known as Pistol Pete  
14          and Mondo.

15                      Now, hopefully, your Honor, you're not in  
16          this deep in the world of the Spanish Cobras, the  
17          Imperial Gangsters, the Puerto Rican Stones and the like  
18          in that neighborhood back in the day. But your Honor can  
19          take judicial notice of the fact that this is all over  
20          the place and won't be contested.

21                      Pistol Pete and Mondo are Armando Serrano  
22          and Jose Montanez. They've been before, I don't believe  
23          this court, possibly another court, on a certificate of  
24          innocence. They are fellow Imperial Gangsters who have

1 brought up cases against Guevara.

2 I just wonder if I could cross-examine  
3 Ghandi, I just wonder, did he ever speak to his fellow  
4 I.G.s, Imperial Gangsters, who bring all these cases and  
5 allegations against Guevara? Is that how he was found?  
6 I wonder this. I wonder his motivation. He brought  
7 these people up in his own affidavit. I'd like to know  
8 how some of these affidavits come about. I won't, and  
9 that goes to weight, and your Honor won't either and that  
10 goes to the weight of the affidavit.

11 One of the things that I found interesting  
12 about this affidavit, Judge, and I'll go to two things.  
13 The first thing is just what he says basically, the  
14 details. And he claims -- and this is all contradicted  
15 by the record and I'll point this out -- he claims there  
16 is a block party, if you recall, right outside of 1604  
17 North Hamlin. That's what he says, that everybody is out  
18 there drinking at around 1:38 a.m., around that time, and  
19 that there is about 20, his affidavit says about 20 guys  
20 out there with their girlfriends, so maybe 30, 40.

21 And they're out there at 1:30 in the  
22 morning and they're all eating pizza, and he called it  
23 football pizza in his affidavit. That doesn't strike me  
24 as credible. First, I just happened to look this up and

1 something your Honor can take judicial notice of, I  
2 brought a print-out in this pile of stuff. The mean  
3 temperature on that date was 29 degrees, below freezing.  
4 The minimum temperature on that day, according to the Old  
5 Farmer's Almanac, which is traditionally used and people  
6 take judicial notice of it maybe back to the time of  
7 Abraham Lincoln. The minimum is 23.9 degrees which is  
8 probably what it was at 1:30 in the morning.

9 I'm not suggesting people don't congregate  
10 on the street to have a little party. I'm not suggesting  
11 any of that. I'm suggesting a huge block party,  
12 pizza-style party at 1:30 in the morning when it's  
13 roughly 23 degrees doesn't sit with me very well,  
14 particularly in light of the fact that Aurelio Martinez  
15 testified that it was very chilly outside, and that mom's  
16 own affidavit said she wanted to keep her son inside  
17 because it was too cold outside. I just have a problem  
18 with that.

19 But there is one issue with the weather  
20 that I'll get to in a minute. It goes directly to what  
21 Mr. Sierra said. Mr. Sierra says he is walking down --  
22 you know what, Judge? At this point in time let me mark  
23 something as an exhibit so your Honor can see it. And  
24 what I'm marking as an exhibit, I'll just mark People's

1 COI No. 1. I previously tendered a copy of this.

2 What I'm tendering as People's COI No. 1  
3 is my attempt at using Google Maps to illuminate the  
4 neighborhood and specifically 1604 North Hamlin. And so  
5 I want to talk about what happened in the trial testimony  
6 and now what Ricardo Sierra says. And this is something  
7 that I previewed earlier.

8 Ricardo Sierra says in his affidavit that  
9 he is walking on the west side of the street, southbound  
10 on Hamlin Avenue, through his, down the street from his  
11 house. I have no issue with that. That's what he says.  
12 You can see the sidewalk here leading towards the red  
13 bubble that's marked 1604 Hamlin.

14 He says that at this point in time -- and  
15 I'll get to his identification, Sierra's identification  
16 of the shooter -- but he says at this time shots are  
17 fired, and in his own affidavit he says that he ducks  
18 into the alley, the only alley that I could assume,  
19 Judge, and I don't think there is much dispute, there is  
20 an alley running just to the north of where the red  
21 bullet point is. You can see that alley there running  
22 east and west, just north of what is North Avenue.

23 And so what Sierra says is, "Well, I  
24 ducked into this alley behind a trash can." That's what



1       he says. And he says, "I don't see the car drive off."  
2       Now, that's key, okay? He says he doesn't see the car  
3       drive off. This is in his affidavit. This is in  
4       paragraph 8 of his affidavit.

5               The problem is, Judge, he later says that  
6       he sees one of the guys almost get run over. This is a  
7       problem. He says he sees one of the guys almost get run  
8       over. We know who that is, okay? There is no evidence  
9       to the contrary that the individual that was almost run  
10      over was Zaragoza, okay, for which the petitioner was  
11      convicted of an attempt murder charge.

12             If you recall, Zaragoza says he was  
13      walking and he was almost hit and there was a cessation  
14      with Rodriguez shooting at him. That's what his  
15      testimony is.

16             Here's the problem, Judge. Here's a big  
17      problem. And I brought this for you because I don't want  
18      to misstate anything. I'm going to hand you the record  
19      of Mr. Zaragoza's testimony because I want you to see it  
20      for yourself. Now, this is unrebutted, unimpeached. For  
21      the record, I'm showing you page 79 of the record,  
22      page 79, line 12, December 16, 1995.

23             "Do you recall what you were doing in the  
24      evening hours" -- Judge, this is the prosecutor, for the

1 record, Rudolph Zaragoza, Rudolfo Zaragoza.

2 Answer: "Yes. I was going up Hamlin."

3 This is key, Judge. This is very key. If  
4 your Honor looks at the photo, Hamlin is split, so if you  
5 go northbound on Hamlin to North Avenue, Hamlin is  
6 actually a little bit to the west. When you proceed  
7 on --

8 THE COURT: Is North Avenue south?

9 MR. HORVATH: North Avenue is a big one going  
10 east-west.

11 THE COURT: But is it south of 1604?

12 MR. HORVATH: You got it. So Hamlin on the south  
13 side of North Avenue is kind of adjacent. And as you  
14 cross North Avenue, you have to go east to pick up Hamlin  
15 again. Remember, that's where Sierra says he is. He is  
16 on Hamlin behind a dumpster. He doesn't see the  
17 shooter's car run off, right? Or excuse me, he's in an  
18 alley. Here's where Zaragoza is.

19 "And prior to walking down Hamlin, where  
20 were you at?"

21 "I was on Hamlin crossing the street  
22 towards the liquor store."

23 This is key, Judge. The liquor store is  
24 actually at 1604 North Hamlin. The record, and it's

1           undisputed, the record is it's a multi-mixed unit  
2           apparently or maybe two adjoining buildings.

3                       But 1604 was just north of where this  
4           liquor store was, apparently a storefront on North  
5           Avenue. That's uncontroverted.

6                       Turning over to page 18, Judge, line 16.  
7           "Do you recall where you were at at 1:30 in the morning,"  
8           the prosecutor to Zaragoza.

9                       "I was crossing North Avenue going  
10          northbound."

11                      "And where were you going to the store?"

12                      "To the liquor store."

13                      "And what corner is the liquor store on?"

14                      "On the northwest side."

15                      "And is that of North and Hamlin?"

16                      "Yes."

17                      Judge, I'm not going to belabor the point  
18          here, but it is uncontroverted that whoever did the  
19          shooting that day almost ran over Zaragoza while he was  
20          on North Avenue crossing, or excuse me, as he was walking  
21          north, crossing North Avenue, going to the liquor store  
22          on the northwest corner.

23                      Ghandi said -- Ghandi said in his  
24          affidavit -- it's his own words -- that he sees somebody

1 almost get run over. Judge, he is hiding behind a  
2 dumpster behind the building in the alley north of  
3 Hamlin.

4 If you look at where Zaragoza almost got  
5 run over, no way he sees it. There is absolutely no way  
6 he sees it. He would literally have to see through 1604  
7 North Hamlin. That's what he would have to do because he  
8 is behind 1604 North Hamlin. How would he know that?  
9 Did somebody tell him? How did he get that information  
10 20 years later to come before this court or not and put  
11 it in an affidavit? How can he claim to have seen  
12 something that your Honor can see with this map is  
13 physically impossible? He could not have seen Zaragoza  
14 crossing North Avenue from where he says he was and  
15 almost being hit by the car. Impossible. You can't do  
16 it.

17 And if the map doesn't convince you, let  
18 his words convince you. He said he never saw the car  
19 drive off. Well, if you didn't see the car drive off --  
20 that's in paragraph 8 as well -- how did you see it  
21 almost run over somebody? Again, were you talking to  
22 your fellow I.G.s when you got back to the neighborhood?  
23 I don't know. Mondo and Pistol Pete, did they have  
24 information? I don't know.

1                   These are all questions I would like to  
2           ask Mr. Sierra if I could contemporaneously cross-examine  
3           him. I can't. And it goes to the weight of the  
4           affidavit.

5                   But one more thing is interesting, Judge.  
6           In paragraph 7 when giving his description of the  
7           shooter, he says that the shooter was in a tank top.  
8           Judge, again, it's 23 degrees or thereabouts that night.  
9           I don't know about you, but if I retire, maybe I have to  
10          look at North Hamlin. It appears nobody gets cold that  
11          night. I mean the shooter is in a tank top in mid  
12          December in 20-some odd degree weather?

13                   But another issue with that, and here's  
14          the problem with that, that's controverted, Judge.  
15          That's controverted because Mr. Martinez testified much  
16          more credibly that the shooter was in a black jacket or  
17          coat. That's clearly in the record. I can point that  
18          out. That's the testimony. It makes a lot more sense.

19                   So when Mr. Sierra puts this evidence  
20          before the court, your Honor can see with his own eyes  
21          that he could not have seen what happened. It's not  
22          possible to have seen it the way he says he saw it. He  
23          didn't even see the car drive off he tells you in  
24          paragraph 8.

1                   In addition, what he is saying is  
2           controverted by the record, not just the fact that it's  
3           quite obvious that somebody rolling around at 1:30 in the  
4           morning is going to have a jacket on in freezing  
5           temperatures.

6                   But the testimony is even worse for him on  
7           that, because he claims there is a block party, at least  
8           30 people out there, including himself. The problem is,  
9           Judge -- and I can show you again in the record if your  
10          Honor wishes to see it -- Mr. Martinez, when he  
11          testified, was specifically asked, "Who do you see in the  
12          area?" He included two people, Rodney and Rudy, this  
13          other individual that was referenced. "Who did you see  
14          in the area?" That's what he said, those two people.

15                  I'm fairly certain that if there was a  
16          block party, a pizza party, out in front of Mr.  
17          Martinez's residence at 1604 Hamlin, he would have seen  
18          it. But he didn't see that. He said the only two people  
19          out there were the two people he saw, Rudy and the  
20          decedent. Completely contrary to the undisputed trial  
21          testimony.

22                  It's fraudulent. Something doesn't smell  
23          right with this affidavit, not 20 years after the fact.

24                  But Judge, I'll go ahead and jump forward.

1 Aurelio Martinez. Let's be real clear, his credibility,  
2 yeah, his credibility has been questioned today. He  
3 hasn't been called a liar, but basically he would have to  
4 be a liar for your Honor to grant this petition because  
5 this is -- he would have obstructed justice, right? And  
6 then he would have got on the stand and committed  
7 perjury. I mean he certainly would have known if he was  
8 lying about an identification, right?

9 So that's it, right? They want to say,  
10 well, they are all relying on Martinez. I'm actually  
11 not. I'm showing you how these affidavits in support  
12 actually are good for me, because they're so suspect,  
13 your Honor has been to wonder what's going on here.

14 But Aurelio Martinez, Aurelio Martinez  
15 stated that -- and you've seen it and I won't belabor  
16 it -- he was 10 to 12 feet away. They had an apparent  
17 stare-down, right, if you recall, the shooter? The  
18 shooter goes into the westbound lane so he is closer to  
19 him, and everybody is looking. I'm sure it's a tense  
20 moment. And maybe it wasn't 15 to 20 seconds, but it  
21 certainly was a good look, right? There was, you know,  
22 hearts pumping. He said the light is on. Nobody  
23 disputes that. Even Sierra says there's lights  
24 everywhere in his affidavit. You know, he says, Martinez

1        says there might have been a light on the car, he is not  
2        sure, but he could see the light inside the car.

3                    So the area is well lit. Nothing to  
4        obstruct his view. Not under the influence. But his  
5        reputation is being impugned. He's essentially being  
6        called a liar. The record reflects he's a family man, he  
7        lived there, married, had a child, worked as a security  
8        guard for an agency, had no gang affiliation, any record,  
9        was not drunk, no impeachables. Sierra's affidavit  
10       impugns that?

11                   And what about the look? The look that he  
12       got was very good, he being Martinez. Obviously very  
13       good. Nobody can say based on the record it wasn't. But  
14       what about the look that Ricardo Sierra got? He says  
15       he's walking southbound on that sidewalk before he comes  
16       to the alley and that the car's going southbound on  
17       Hamlin. So as his car is passing by him, he looks over.  
18       That's the look he gets, the side look as the car is  
19       passing him by.

20                   And by the way, the car is probably in the  
21       right lane at that point in time, the correct lane, which  
22       would be further away from what Mr. Martinez testified to  
23       which is that the car swerved into the other lane and  
24       then they had this staring contest.



1                   Judge, if your take all three of these  
2                   affidavits and you even put them in 23-degree weather,  
3                   something still doesn't smell right. And so my case  
4                   isn't just Aurelio Martinez. My case is Aurelio Martinez  
5                   plus a bunch of suspect affidavits which would suggest,  
6                   at least to me, that something untoward is going on here.

7                   Whether he is innocent of this offense or  
8                   not, as your Honor correctly stated, it's their burden by  
9                   a preponderance of the evidence to bring forward and they  
10                  have not. Their best affidavit is clearly fraudulent.  
11                  Their other affidavits are suspect at best.

12                  I ask you to deny the petition. Thank you  
13                  for your time.

14                  MS. THOMPSON: I want to be brief, but there is an  
15                  few things I need to say, your Honor.

16                  You heard from the State exactly what I  
17                  think Mr. Rodriguez predicted you would hear, which is  
18                  that you have to, this court has to credit Mr. Martinez  
19                  in order to deny Mr. Rodriguez's release. They  
20                  encouraged you to look carefully at these affidavits, and  
21                  Mr. Rodriguez encourages you to do the same, because  
22                  that's the evidence here.

23                  But what the State is essentially saying  
24                  is, don't believe Sierra because it contradicts Martinez,

1 and don't believe these other witnesses because they're  
2 not enough. I mean Martinez is the tent pole of their  
3 presentation and nowhere did I hear the State explain why  
4 Martinez has credibility outside, setting aside somehow  
5 his interactions with Guevara and Halvorsen that lead him  
6 to give this testimony and make these I.D.s, and that's  
7 the problem.

8 On its face, to address some of the  
9 specific points about Sierra, Martinez is coming home  
10 from the south as well. In his testimony, he doesn't  
11 say, "I walked down," you know, "my block of Hamlin to  
12 get to my house." He is also coming from the south. And  
13 so whether he was paying attention to what was going on  
14 on the block or not, there is no reason he would have  
15 been. I mean when the State says if there was a block  
16 party, he would have known it. Why? He didn't walk down  
17 that part of the block.

18 MR. HORVATH: Judge, I'm going to object. That  
19 misrepresents the testimony. Sierra is saying the  
20 shooting occurred in this crowd of people in front of  
21 1604 Hamlin. That's what he says in the affidavit.

22 MS. THOMPSON: This block party is not in front of  
23 the apartment. Martinez says he goes -- Sierra says he  
24 goes to heat up this pizza and bring it back to where Mr.

1 Rudy is. He doesn't say that all those people are at the  
2 south end of the block. The court can look at the  
3 affidavit and see that. I mean that's not what he says.  
4 He says that block party is going on the block and he  
5 comes down the street to give Mr. Rudy his pizza. That's  
6 what he says.

7 And it makes sense anyway, because exactly  
8 for the reason I said earlier, this is a drive-by. Who  
9 is driving by to shoot at Mr. Martinez? Not a gang  
10 member. You know, Mr. Kemppainen and Mr. Rudy, with all  
11 respect to them, are not going to appear to anyone to be  
12 gang members. They're older gentlemen that are drinking  
13 outside on this block. That is not part of whatever is  
14 going on. I mean whoever is on that block is on the  
15 block because of other people that are present. And so  
16 it stands to reason, this is a gang shooting. It doesn't  
17 target these people. Something else is going on here.

18 But the importance of what the State is  
19 saying is, credit Martinez because that's different than  
20 what Mr. Sierra is telling you. Mr. Sierra's affidavit  
21 on its face says that the thing, the person he thinks  
22 almost got run over was Rudy or one of the other guys.  
23 And he says, "I didn't see the car leave because I was in  
24 the alley." He's not talking about whatever is happening

1 with Mr. Zaragoza on the corner.

2 I mean that's what Mr. Rodriguez was  
3 talking to about in his argument earlier. He is talking  
4 about something that Mr., that Mr. Sierra can see from  
5 here and whatever he is describing is something happening  
6 up here. So he is talking about somebody getting run  
7 over. He's talking about the car being up here and the  
8 people standing in front. He is obviously not talking  
9 about Mr. Zaragoza.

10 THE COURT: When you say the car being up here, I  
11 don't know what --

12 MS. THOMPSON: Sure. I want to be clear. Where  
13 they've got their little red arrow here.

14 THE COURT: Which indicates the address of 1604  
15 Hamlin.

16 MS. THOMPSON: Right. That's on Hamlin. That's  
17 where the car stops and where the shooting is. And  
18 that's what Mr. Sierra has a view of here. Whatever  
19 happens with Mr. Zaragoza here on North Avenue, that's  
20 not who he identifies. That's not what he is describing.  
21 He is talking about events he sees here on Hamlin.

22 And so that's what Mr. Sierra is talking  
23 about what happens here. And that's where Mr. Rudy and  
24 Mr. Martinez and Mr. Kempainen are standing is on

1       Hamlin. I agree, whatever happens with Mr. Zaragoza is  
2       somewhere else and that's not what Mr. Sierra is  
3       describing.

4               And it's true that this is Mr. Rodriguez's  
5       burden and that he could have called Mr. Sierra rather  
6       than relying on his affidavit, and that's not how we  
7       presented this case. But it's not true that the State  
8       can't cross Mr. Sierra. They could have called anyone to  
9       testify at this hearing they wanted to.

10              MR. HORVATH: Excuse me, Judge. I object. Shifting  
11       the burden.

12              MS. THOMPSON: No, they've got no obligation to  
13       present anyone. But if they're going to tell you not to  
14       believe Mr. Sierra and to posit hypothetical reasons,  
15       things that could have been going on that make things not  
16       believable, they could have put anyone in front of you  
17       that they want to and they didn't do that either.

18              So the court has the record in front of  
19       it. It can consider what it wants to consider from these  
20       affidavits. But the State, to suggest possibilities  
21       about why not to believe Sierra, why not to believe his  
22       mother, why not to believe Zaragoza and what was going on  
23       with the affidavits in '97, you know, the State could  
24       present evidence if they wanted to. They don't have to.

1 But them saying, well, here's some things to think about,  
2 Judge, that's not enough to overcome the burden. It's  
3 not enough.

4 When they talk about Zaragoza as well, you  
5 know, when they say, you know, maybe this is what was  
6 happening with his affidavit, they're guessing. They're  
7 guessing just like they're guessing with these other  
8 witnesses.

9 And I will say this, your Honor. They  
10 want to tell this court to believe Martinez's original  
11 identification, to believe Mr. Zaragoza's original  
12 identifications, identifications that come after  
13 initially those witnesses are not able to make I.D.s.  
14 They're asking you to believe that, and they're telling  
15 you essentially, well, nobody can ever know about that.

16 Well, the best person to know what  
17 happened in those identifications with Mr. Zaragoza and  
18 Mr. Martinez is Detective Guevara and he is not talking.  
19 And the State obviously is staying as far away from him  
20 as possible. They're not even really mentioning his name  
21 in their closing arguments.

22 But there is a person that knows what  
23 happened in those identifications. That person chose not  
24 to talk about this. So there are answers here. Those

1           answers are with Detective Guevara taking the 5th about  
2           what happened.

3                       And we're not calling Mr. Martinez a liar,  
4           you know, by saying, I think Mr. Martinez is a dirty  
5           liar, a dirty obstructor of justice. That's what I say  
6           to this court. There is somebody who obstructed justice  
7           and who manipulated these I.D.s and who made it so Mr.  
8           Martinez would testify the way he did, and that person  
9           took the 5th when he was asked about it and that person I  
10          am calling a liar and an obstructor of justice.

11                     And that's a reason for this court not to  
12          credit Martinez, not because -- it's obviously not his  
13          goal to wrongfully convict Mr. Rodriguez. It's somebody  
14          else's goal, and that person took the 5th when they were  
15          asked about it.

16                     It's Mr. Rodriguez's burden. It's a  
17          burden he embraces. He's presented the best evidence he  
18          could from people who know what happened. The State's  
19          given you their guesses about why you shouldn't credit  
20          these people. They stayed as far away from the real  
21          answers in this case as possible. And this is the case  
22          the court has.

23                     And in some ways maybe this seems like,  
24          you know, some difficult case to parse through these

1 witnesses and to reach a final conclusion. But we're in  
2 a preponderance of the evidence standard. This court  
3 doesn't have to have every single question about this  
4 case answered. It's just got to decide what is more  
5 likely here. Is it more likely that Mr. Rodriguez, where  
6 all the evidence that says he did this come from a person  
7 who took the 5th, who won't even talk about what  
8 happened, is that more likely, or is it more likely that  
9 Mr. Zaragoza's recantation, Mr. Sierra's affidavit, the  
10 testimony -- and I didn't even mention the affidavit from  
11 his sister -- but the testimony from his mother and  
12 sister saying he was home, is it more likely that that's  
13 true here, or that the State's case which rests entirely  
14 on Detective Guevara's police work is true?

15 That's what the court's got to consider.  
16 Mr. Rodriguez has met his burden. It would be wrong for  
17 this court to continue to maintain Mr. Rodriguez not  
18 being declared innocent because of the detective work  
19 Detective Guevara and Detective Halvorsen did.

20 It's an important decision for this court  
21 to make. It's not a hard one. This court should grant  
22 Mr. Rodriguez's certificate of innocence.

23 MR. HORVATH: Judge, could I correct the record? I  
24 want to make sure the record is clear.



1 THE COURT: Uh-huh.

2 MR. HORVATH: Exhibit 2 of Ricardo Sierra,  
3 paragraph 5, I'm going to read the whole thing. Your  
4 Honor can certainly read along with me. I'm going to  
5 read the whole thing so we're real clear.

6 Paragraph 5: "I don't remember the date  
7 that Rodney got shot, but I was there. It was night  
8 time. I had bought him a six-pack of beer. I bought  
9 another six-pack for my father. Me and the other guys in  
10 the neighborhood had pitched in to buy everyone a  
11 football pizza. He ate the pizza on the block. Everyone  
12 ate fast but Rodney waited while we ate.

13 THE COURT: Everyone ate first.

14 MR. HORVATH: Excuse me, excuse me. Thank you,  
15 Judge. "Everyone ate first but Rodney waited while we  
16 ate. I snatched some slices out for him. I ran back to  
17 my house to warm up some in the microwave." He then  
18 recants that he's walking back down and sees the  
19 shooting.

20 Judge, Rodney is who he is coming to bring  
21 pizza. Rodney was in front of 1604. But there is no  
22 testimony in the record, none whatsoever, that there is a  
23 block party in front of 1604. None, none whatsoever.

24 That's the first thing anyone has heard of

1           it, and it contradicts Aurelio Martinez's statement that  
2           while he was out in front of 1604 with Rodney, his friend  
3           that got shot, apparently everyone is friends with Rodney  
4           now, but we know where Aurelio Martinez was, when he was  
5           there talking to Rodney when Rodney gets shot, the only  
6           person he sees in the area, that's the word that he used  
7           that testifies to, in the area, is Rudy.

8                       He didn't say a block party. There wasn't  
9           a block party, not in front of 1604.

10                      I just want to make the record real clear  
11           on that.

12                      THE COURT: This is your copy.

13                      MR. HORVATH: Thank you, sir.

14                      MS. THOMPSON: I've said enough, your Honor.

15                      THE COURT: Okay. All right. Well, thank you very  
16           much for a very interesting argument on this Friday  
17           morning. I'll take the matter under advisement, take a  
18           look at the affidavits and consider the arguments. Very  
19           interesting argument from each of you.

20                      I know that you had indicated that you  
21           were available, I think, the 13th of December, did you  
22           say?

23                               (A discussion was held  
24                               off the record.)

1 THE COURT: 13th of December.

2 MR. HORVATH: Thank you.

3 THE COURT: Okay. Thank you, all.

4 MS. MYERSCOUGH-MUELLER: Thank you, your Honor.

5 MS. THOMPSON: Thank you, Judge.

6 (WHEREUPON, the hearing in the  
7 above-entitled cause was continued to  
8 December 13, 2019.)

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Susan M. Sychta  
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Ssychta613@gmail.com

TO: Austin Rahe  
(312) 970-3474

RE: People versus Ricardo Rodriguez  
Case No. 96 CR 02723-01  
Hearing before Judge Leroy K. Martin, Jr.  
on November 22, 2019

Original, 75 pages @ \$4 p/p                      \$ 300.00

# Exhibit 4

## Austin Rahe

---

**From:** Tara Thompson <tara@loevy.com>  
**Sent:** Tuesday, January 7, 2020 7:11 PM  
**To:** Brueggen (External), David A.; Josh M. Engquist; Eileen E. Rosen; Austin Rahe; Theresa B. Carney; Catherine M. Barber; Caroline P. Golden; Jim Daffada; Jeffrey R. Kivetz; Diamond M. Dixon; Thomas Leinenweber  
**Cc:** Russell Ainsworth  
**Subject:** Rodriguez v. Guevara, et al.  
**Attachments:** FERPA CONSENT Rodriguez.docx; Coleman Proposed Protective Order.pdf

Counsel:

We apologize for not conferring with you earlier about the motion that is up tomorrow. Obviously we all want to move this case forward, so we are glad for an opportunity to do that. Below is Plaintiff's view of the outstanding issues.

**Plaintiff's responses to Defendants' discovery requests** - Plaintiff recognize that these documents are outstanding, and we apologize for the delay. Mr. Rodriguez has been out of state caring for some elderly relatives, but we recognize the need to get these done to move the case forward. We are finalizing our responses now and will provide them by Friday.

**Defendants' Proposed FERPA Order** - Plaintiff can respond in writing, but we hope that Defendants will agree to a compromise -- the Defendants in the recent *Bouto* case agreed to this compromise -- which is that, with some minor modifications to the proposed order as reflected in the attached, Plaintiff agrees for Defendants to seek Plaintiff's Chicago Public Schools records through this device. If there are other education institutions that Defendants wish to obtain records from, Plaintiff is happy to confer and get a modified release from Mr. Rodriguez if necessary. Please let us know if that is acceptable. If so, we will promptly get the attached proposed release signed by Mr. Rodriguez.

**Defendants' Proposed Protective Order** - While Plaintiff generally has no problem with the protective order proposed by Defendants, Plaintiff takes the same position it has in other cases (including *Bouto*) that this protective order should track the protective order entered in the *Nevest Coleman* case (attached) that makes a slight addendum to paragraph 6 to add language that:

All mental health information that is subpoenaed or requested from a covered entity shall be produced to RICARDO RODRIGUEZ'S attorneys for a privilege review to be conducted within three days of receipt. All documents produced to RICARDO RODRIGUEZ'S attorneys shall then be produced to the requesting party, excepting any documents over which privilege is asserted, which shall be identified on a privilege log.

\*\*\*

It remains Plaintiff's view that because of the particular privileges that may attach to mental health records, including potential psychotherapist-patient privilege, these records should go to Plaintiff first for a privilege review so that any relevant privilege is not waived by production. If Defendants can agree to that addendum to their proposal I think the parties are in agreement about the scope of this order.

**Scheduling Depositions** - Obviously it is fair for Defendants to want to see Plaintiff's discovery responses before moving forward with depositions, but we should confer and start setting a schedule - Plaintiff previously provided a notice of the depositions he wants to take, and we assume Defendants has others, so let's set up a

time to talk about that. Let us know if there are any times on Friday or early next week we can set up a call to talk about scheduling.

Russell Ainsworth will be in court in the morning for Plaintiff if we need to talk further before stepping up.

Thanks,

Tara

---

Tara Thompson  
Loevy & Loevy  
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Chicago, Illinois 60607  
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(312) 243-5902 (fax)  
[tara@loevy.com](mailto:tara@loevy.com)  
pronouns: she, her, hers



# Exhibit 5

# LOEVY & LOEVY

---

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

February 5, 2020

**Via Electronic Mail**

Josh Engquist  
The Sotos Law Firm, P.C.  
141 W. Jackson, Suite 1240A  
Chicago, Illinois 60604

Eileen E. Rosen  
Stacy A. Benjamin  
Catherine M. Barber  
Theresa B. Carney  
Austin G. Rahe  
Rock Fusco & Connelly, LLC  
312 N. Clark, Suite 2200  
Chicago, IL 60654

James V. Daffada  
Thomas M. Leinenweber  
Kevin E. Zibolski  
Justin L. Leinenweber  
Leinenweber Baroni & Daffada, LLC  
120 N. LaSalle St., Suite 2000  
Chicago, IL 60602

*Re: Rodriguez v. City of Chicago, Case No. 18 CV 7951*

Counsel:

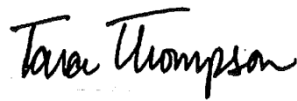
Josh, we have received your notice of deposition for Mr. Rodriguez's deposition. We are happy to produce him at a date convenient to the parties after Plaintiff has had a chance to confer with his counsel and prepare for the deposition. Please provide us with dates in late February or early March that would work for Defendants for the deposition and we will get it scheduled.

As you know, Mr. Rodriguez is a citizen of Mexico, and would like the support of the Mexican Consulate's Office for his deposition. For that reason, we propose producing him for his deposition at the Mexican Consulate Office at 204 S. Ashland Avenue in Chicago. The Consulate has a large conference room that is available for this purpose. We trust that Defendants do not intend to use this civil litigation or their connection to law enforcement or the involvement of law enforcement as a way

of gaining tactical advantage in this litigation or in this deposition. If Defendants intend otherwise, please let us know so that we can discuss.

Finally, as Defendants know, we served notice of depositions upon Defendants back in September seeking to set dates for various depositions, including Defendants. We recognize that despite the pendency of that notice, Defendants appear to be seeking to depose Mr. Rodriguez first. We are happy to produce him as the first witness, but of course we can only agree to produce him if Defendants will provide dates for their depositions as well.

Sincerely,

A handwritten signature in black ink that reads "Tara Thompson". The signature is written in a cursive, flowing style.

Tara Thompson

cc: Russell Ainsworth

# Exhibit 6

**Austin Rahe**

---

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Sent:** Monday, February 17, 2020 9:08 PM  
**To:** Josh M. Engquist  
**Cc:** Eileen E. Rosen; Caroline P. Golden; Catherine M. Barber; David A. Brueggen; Diamond M. Dixon; Jim Daffada ([jim@ilesq.com](mailto:jim@ilesq.com)); Jon Loevy; Kara Hutson; Monica Fuentes; Rachel Brady; Thomas Leinenweber ([thomas@ilesq.com](mailto:thomas@ilesq.com)); Austin Rahe; [justin@ilesq.com](mailto:justin@ilesq.com); [kevin@ilesq.com](mailto:kevin@ilesq.com); [mjs@ilesq.com](mailto:mjs@ilesq.com); [russell@loevy.com](mailto:russell@loevy.com); [ruth@loevy.com](mailto:ruth@loevy.com); Theresa B. Carney  
**Subject:** Re: Rodriguez v. Guevara, et al - 18 CV 7951 | NOD

Josh:

Defendants have articulated no prejudice to them to this deposition being conducted at the consulate's office - please let me know how that would prejudice Defendants. Plaintiff has articulated his reason for wanting the deposition at that location - it is not, as you insinuate, to gain some tactical advantage in this trial or to obstruct justice, but to facilitate the attendance of consular officers and to ensure that the deposition proceeds fairly.

Similarly, Defendants have articulated no reason for excluding consular officers from the deposition. Plaintiff is a Mexican national and has the right to consult with the consulate about legal matters in the United States. The Federal Rules of Civil Procedure do not bar such persons from depositions - to the contrary, the burden would be on Defendants to seek a protective order and articulate good cause for the exclusion of consular officers from the deposition. I invite you to review *Murphy v. United States*, 2017 WL 6379599 (D. N.M. Dec. 12, 2017) and the supporting caselaw from around the country cited therein which addresses the attendance of non-parties at federal depositions.

Finally, I note that Plaintiff remains willing to schedule this and other depositions in the case - you have yet to provide any proposed dates other than the initial date you noticed Plaintiff's deposition for that we promptly informed you did not work for Plaintiff and his counsel. When you provide additional dates we will be happy to work on scheduling while we work out the location details.

Thanks,

Tara

On Mon, Feb 17, 2020 at 4:25 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:  
Counsel:

Please explain to defendants why Plaintiff needs to or is allowed to obtain the advice and support of the Mexican consulate in this civil matter, and why he needs to obtain the advice and support of the Mexican consulate at the consulate and cannot do so in another location. Also, Defendants object to allowing anyone to be present at Plaintiff's deposition that is not a party or an attorney representing a party in this matter. Please provide us with any authority that allows a member of the Mexican consulate to be present at Plaintiff's deposition over Defendants' objections. Further, please advise what advice and support the Mexican consulate can provide Plaintiff at his deposition in this civil case. It is not clear to us what the Mexican consulate can provide to Plaintiff that his attorneys cannot provide, or why he cannot obtain this "advice and support" prior to his deposition. In addition, Plaintiff has articulated no reason why Plaintiff would be prejudiced if his deposition went forward at any of the locations

proposed by Defendants, especially when it has never been an issue in the past (other than Solache/Reyes who are not allowed to return to the country).

Instead, it seems to Defendants that it is Plaintiff that is using the location of Plaintiff's deposition as a tactical advantage in this litigation and in Plaintiff's outstanding warrant/criminal case so that he may avoid arrest to attempt to both continue to prosecute this case while also purposefully evading the police in his criminal case by using the attorneys on both sides of the aisle to do so.

Finally, although you may disagree, Defendants are prejudiced because Defendants' attorneys are not willing to risk their law licenses, ethical, moral, and legal obligations, and criminal liability to assist Plaintiff in evading a felony warrant.

Sincerely,

Josh Engquist

(630) 735-3303

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>  
**Sent:** Monday, February 17, 2020 1:52 PM  
**To:** Josh M. Engquist  
**Cc:** Diamond M. Dixon; Austin Rahe; Caroline P. Golden; Kara Hutson; Catherine M. Barber; [justin@ilesq.com](mailto:justin@ilesq.com); Jim Daffada ([jim@ilesq.com](mailto:jim@ilesq.com)); [kevin@ilesq.com](mailto:kevin@ilesq.com); Thomas Leinenweber ([thomas@ilesq.com](mailto:thomas@ilesq.com)); Theresa B. Carney; [mjs@ilesq.com](mailto:mjs@ilesq.com); Eileen E. Rosen; David A. Brueggen; [russell@loevy.com](mailto:russell@loevy.com); [ruth@loevy.com](mailto:ruth@loevy.com); Monica Fuentes; Jon Loevy; Rachel Brady  
**Subject:** Re: Rodriguez v. Guevara, et al - 18 CV 7951 | NOD

Counsel:

Thanks for your response. The issue is pretty straightforward to Plaintiff - we proposed to conduct his deposition at the office of the consulate so that he can receive the advice and support of that office during his deposition, and Defendants haven't articulated why this location would present a burden to Defendants given that the consular office is right in Chicago. Obviously all of us are officers of the court and are well aware of our ethical and legal obligations in this case, but it remains unclear to Plaintiff, even under the statute you cited, why any party's legal or ethical obligations would be at risk were Mr. Rodriguez's deposition to proceed at the consulate. It remains Plaintiff's position, as I said in my correspondence, that it would be inappropriate

for Defendants to use Plaintiff's pending warrant or their connection to law enforcement as a way of gaining tactical advantage in this litigation. That being said, Plaintiff's counsel intends to produce Plaintiff for his deposition in this matter, and if Defendants want to propose dates for his deposition, we can get it scheduled and resolve the specific location in Chicago as we move forward.

Best,

Tara

On Mon, Feb 17, 2020 at 1:39 PM Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)> wrote:

Counsel:

We write in response to your February 5, 2020 correspondence which proposes that Plaintiff's deposition proceed at the Mexican Consulate. First, we are surprised that after our, and the Court's, repeated attempts to have you answer the simple question of when your client is going to resolve his arrest warrant, that this is the response we receive. As officers of the Court, it is unclear to us how you can be so flippant in ignoring a judicial mandate to have your client taken into custody for aggravated kidnaping. Second, we (as I have done on several other occasions in other litigation over the years) made sure you were aware of your client's legal issue so that it could be resolved prior to his deposition. Our goal in informing you of your client's status, was not to seek any tactical advantage in the litigation or at the deposition. To be clear, we informed you of your client's status because we believe it is an obstacle to Plaintiff's ability to prosecute his lawsuit because his fugitive status places him beyond judicial control.

Your request to choose a later date can, of course, be worked out among the parties. However, we are insistent that the deposition of Mr. Rodriguez will have to take place at either my office or at Rock Fusco & Connelly. We cannot agree to your proposal that his deposition take place at the Mexican Consulate. In fact, your proposal that the deposition take place at the Mexican Consulate only reinforces our belief that his fugitive status places him beyond judicial control. Additionally, we as officers of the Court, cannot be complicit in concealing or aiding Plaintiff in violation of State law as you have requested. (720 ILCS 5/31-5).

As for the depositions you noticed, as you are aware, you noticed a series of 14 depositions at the same time you issued initial discovery. It would be disingenuous for you to assert that you actually intended any of these depositions to go forward as noticed. It was an obvious attempt to call "mine" on all of the depositions. Moreover, based upon the date of the warrant, your client was already in hiding from authorities at the time you issued these. Certainly, if you were aware of your client's fugitive status at the time that you served the deposition notices and discovery, it was you, not Defendants, attempting to seek a tactical advantage. Regardless, as you are aware, the reason discovery has been delayed is because your client was unable or unwilling to respond to written discovery while he remained in hiding.

Defendants should not be forced to expend time and resources on discovery while your client remains a fugitive, is unwilling to cooperate with discovery in any way less than having all the attorneys on this case conceal him from a valid arrest warrant and, apparently insists on maintaining his fugitive status thereby remaining beyond judicial control.

Please inform us whether your client intends to resolve his warrant issue and when.

Sincerely,

Josh Engquist

(630) 735-3303

**From:** Tara Thompson <[tara@loevy.com](mailto:tara@loevy.com)>

**Sent:** Wednesday, February 5, 2020 9:45 PM

**To:** Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)>; Josh M. Engquist <[JEngquist@jsotoslaw.com](mailto:JEngquist@jsotoslaw.com)>; [arahe@rfclaw.com](mailto:arahe@rfclaw.com); Caroline P. Golden <[CGolden@jsotoslaw.com](mailto:CGolden@jsotoslaw.com)>; Kara Hutson ([khutson@rfclaw.com](mailto:khutson@rfclaw.com)) <[khutson@rfclaw.com](mailto:khutson@rfclaw.com)>; Catherine M. Barber ([cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)) <[cbarber@rfclaw.com](mailto:cbarber@rfclaw.com)>; [justin@ilesq.com](mailto:justin@ilesq.com); Jim Daffada ([jim@ilesq.com](mailto:jim@ilesq.com)) <[jim@ilesq.com](mailto:jim@ilesq.com)>; [kevin@ilesq.com](mailto:kevin@ilesq.com); Thomas Leinenweber ([thomas@ilesq.com](mailto:thomas@ilesq.com)) <[thomas@ilesq.com](mailto:thomas@ilesq.com)>; [tcarney@rfclaw.com](mailto:tcarney@rfclaw.com); [mjs@ilesq.com](mailto:mjs@ilesq.com); 'Eileen E. Rosen' ([erosen@rfclaw.com](mailto:erosen@rfclaw.com)) <[erosen@rfclaw.com](mailto:erosen@rfclaw.com)>; David A. Brueggen <[DBrueggen@jsotoslaw.com](mailto:DBrueggen@jsotoslaw.com)>

**Cc:** [russell@loevy.com](mailto:russell@loevy.com); [ruth@loevy.com](mailto:ruth@loevy.com); Monica Fuentes <[monica@loevy.com](mailto:monica@loevy.com)>; Jon Loevy <[jon@loevy.com](mailto:jon@loevy.com)> **Subject:** Re: Rodriguez v. Guevara, et al - 18 CV 7951 | NOD

Counsel:

Please see the attached correspondence related to the deposition notice for Mr. Rodriguez.

Best,

Tara Thompson



On Tue, Jan 28, 2020 at 5:01 PM Diamond M. Dixon <[DDixon@jsotoslaw.com](mailto:DDixon@jsotoslaw.com)> wrote:

Dear Counsel,

On behalf of Individual Defendants' counsel, Josh M. Engquist, attached please find a notice of deposition for Ricardo Rodriguez.

Thank you.

**Diamond M. Dixon**

**Paralegal**

THE SOTOS LAW FIRM, P.C.

141 W. JACKSON, SUITE 1240A

CHICAGO, IL 60604

Direct Line: (630) 735-3309

Fax: (630) 773-0980

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pronouns: she, her, hers

--

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pronouns - she/her ([why does this matter?](#))

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